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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

WEDNESDAY, MAY 13, 1987

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
Bossy, M. L. (Chatham-Kent L)
Mancini, R. (Essex South L)
Martel, E. W. (Sudbury East NDP)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:
Gigantes, E. (Ottawa Centre NDP) for Mr. Martel
McLean, A. K. (Simcoe East PC) for Mr. Villeneuve
Smith, D. W. (Lambton L) for Mr. Morin
Wiseman, D. J. (Lanark PC) for Mr. Turner

Also taking part:
Harris, M. D. (Nipissing PC)
McClellan, R. A. (Bellwoods NDP)
Smith, E. J. (London South L)

Clerk: Forsyth, S.

Staff:
Baldwin, E., Legislative Counsel
Eichmanis, J., Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, May 13, 1987

The committee met at 10:12 a.m. in room 151.

ORGANIZATION

Clerk of the Committee: I will call the meeting to order.

Honourable members, it is my duty to call upon you to elect one of your number as chairman of the committee. Are there any nominations?

Mr. Treleaven: Eddie Sargent.

Mr. Sterling: How about Smirle Forsyth?

Are you eligible?

Clerk of the Committee: That is not in order, no.

Mr. Sterling: I will nominate the member for Oshawa (Mr. Breaugh).

Clerk of the Committee: Are there any further nominations?

Mr. Bossy: I move that nominations be closed.

Clerk of the Committee: There being no further nominations, I declare nominations closed and Michael Breaugh duly elected chairman of the committee.

Interjections.

Mr. Chairman: It just shows that Broadbent is not the only popular politician from Oshawa. We are not quite number one, but we are getting there all over the country.

I need a nomination for the position of vice-chairman.

Mr. Sterling: I think it is customary to nominate a member of the same party, is it, for the vice-chairman?

Mr. Chairman: That is customary, yes.

Mr. Bossy: I would like to nominate Mr. Mancini.

Mr. Sterling: I nominate Mr. Warner as vice-chairman.

Mr. Chairman: Are there any further nominations?

Mr. Warner, will you stand?

Mr. Warner: I will.

Mr. Chairman: I have a bit of a problem in that Mr. Mancini is not here as yet. We can proceed with Mr. Warner. All those in favour of Mr. Warner?

Mr. Warner: I got one vote.

Mr. Chairman: A recess is always in order. We will recess for a couple of minutes while you check that out.

Interjections.

Mr. Chairman: I know I do not have to, but I will remind you that the cameras are running.

The committee recessed at 10:15 a.m.

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Mr. Chairman: We have a small procedural problem here. It is really not all that difficult. Mr. Mancini is in transit from Windsor. If it is your pleasure, we do not have to elect a vice-chairman today. We could set that aside and do that on another day. If not, we could proceed in his absence. His name could stand. If you would prefer, it might be a little more appropriate to do that on another day. What is your pleasure?

Mr. Bossy: I agree to set it aside.

Mr. Chairman: Okay. We will set that aside.

We do have some procedural motions that we need to have moved.

Mr. Warner moves that, unless otherwise ordered, a transcript of all committee hearings be made.

This is a motion to keep transcripts.

Motion agreed to.

Mr. Chairman: Mr. Warner moves that a subcommittee on agenda and procedure be appointed to consider and report to the committee on the business of the committee, that substitution be permitted, that the presence of all members of the subcommittee is necessary to constitute a quorum and that the membership of the subcommittee be composed of the following members.

We will fill in the following members at a later date.

Mr. Warner: Fill in the blanks.

Mr. Chairman: We are striking a subcommittee on agenda and procedure.

Mr. Treleaven: We are going to vote on something in blank?

Mr. Chairman: No. We are going to vote to establish the subcommittee and we will--

Mr. Warner: We can establish the members at a future date.

Motion agreed to.

Mr. Warner: I am not used to this unanimous support.

Mr. Chairman: Mr. Warner moves that a subcommittee on security be appointed to consider and report to the committee on matters relating to the

security of the Legislative Building and legislative annex and that the subcommittee be composed of the following members.

Again, we are striking a subcommittee, and we will do the actual motion to put members on that subcommittee at a later date.

Motion agreed to.

Mr. Warner: We are on a roll.

Mr. Chairman: You are on a roll.

Mr. Warner moves that a subcommittee on members' services be appointed to consider and report to the committee on the provision of services and facilities to members and that the subcommittee be composed of the following members.

It is the same routine, striking a subcommittee, and members will be put on that at a later date.

Motion agreed to.

Mr. Chairman: We have a proposed budget. Mr. Warner, could you will help me?

Mr. Treleaven: Will we have to fill in the blanks later, too?

Mr. Warner: There is an idea.

Mr. Chairman: I would suggest two things for your consideration on the budget: first, a simple motion to approve the budget, which we will then table; that will give you a week or so, or however long you want, to go through it. Second, if you have had the opportunity of going through it and it meets with your concurrence, we could deal with the matter now.

For your information, the budget is essentially to provide for activities we already know of that were suggested last year and we did not do. Again, this would not really be establishing that we are going to do anything. It simply provides the budgetary amounts that would allow us, for example, to review the procedural and administrative matters, all of that, and other related activities.

Mr. Warner moves that the budget be adopted as printed.

Mr. Chairman: What is your pleasure now? Would you like to table this or approve it?

Mr. Sterling: Because the matter is always tentative anyway, there is not really much sense in going through it in much more detail. This is about the same budget we had last year, maybe slightly less. You cannot really predict these things in advance in terms of what the business of the committee might be over the next year. Therefore, we will support the motion.

Motion agreed to.

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Consideration of Bill 34, An Act to provide for Freedom of Information and Protection of Individual Privacy.

Mr. Chairman: We do have some other business this morning that might not go quite as quickly. We are considering Bill 34.

There is another little procedural matter. I would like a motion to approve the use of the version of Bill 34 that we have--this one that is on your desks--as reprinted to show the amendments proposed by the Attorney General. This is the reprinted version and you have it. It is the one we have been working with for the last little while.

Mr. Warner moves that the committee use the version of Bill 34 as reprinted to show the amendments proposed by the Attorney General.

Mr. Sterling: Prior to disbanding the last time or adjourning the hearings, did we ask the clerk for a summary for all of the bill as amended to that time?

Mr. Chairman: Not to my knowledge.

Mr. Sterling: Do we have a summary of the amendments that have already carried?

Clerk of the Committee: The only thing that has not carried is section 50.

Mr. Chairman: No; he almost wants a reprinted bill.

Mr. Sterling: We do not have a reprinted bill as such to date.

Mr. Chairman: No.

Mr. Warner has moved that the committee use the version of Bill 34 as reprinted to show the amendments proposed by the Attorney General.

Motion agreed to.

Mr. Sterling: As we go through, I notice there are a number of amendments, both from the government and from Mr. Warner. If we approach a section where there has been an amendment that was adopted subsequent to this bill, would legislative counsel make note of that?

Mr. Chairman: Sure; that is no problem.

What we have done on this bill so far is virtually to complete the bill and set aside, I believe, four major areas; and there may be some other ones that will be open for votes today. We have a one-page draft of areas where we know votes were either withdrawn or there was a clear indication that a motion would be put; the motion simply was not put at that time.

On subsection 50(1a), an amendment has been proposed by Mr. Martel. There was an amendment to that amendment proposed by Mr. Sterling and there may be further consideration of section 50.

There is, on subsection 50(1b), an amendment in the name of Ms. Gigantes that was not considered. On section 52a, there is an amendment in the name of Mr. O'Connor that was not considered. Subsection 2(1) in the name of Mr. Warner was not considered, and subsection 2(3) in the name of Mr. Warner not considered.

For those of you who speak one of our official languages, according to my notes what we have essentially are the following. There is the override provision, which are all the amendments in and around section 50. That is kind of a public interest override. We have Mr. O'Connor's amendment, which is essentially having to do with an appeal process through the courts. We have Mr. Warner's amendment, which proposes bringing in notice to colleges and universities that they would be included three years hence. I believe the other one has to do with actually naming the schedule 3 agencies that would be covered by this bill.

Those are essentially the four areas that are outstanding. We are in committee and I will be as loose as I can to facilitate members who wish to put amendments. I would just remind you that technically we have stood down some votes. We have four matters that are clearly before the committee. If there is ready consensus in the committee, I will allow considerable latitude on other amendments. If you get really ridiculous, I think the committee will guide you in a firm way into not being quite so ridiculous.

Mr. Warner: There is at least one other relatively minor one. It has been drawn to my attention that our definition of "municipality" was not complete in that, for some reason, the county of Oxford was removed from the definition, as well as Metropolitan Toronto. An amendment is in order to clarify that, and it falls under subsection 2(5).

Mr. Chairman: Okay. I think you all got notice of this. There was a drafting problem from legislative counsel in that, in the quaintness of our system here, when you say "municipalities," you have to include certain other municipalities that are not considered to be municipalities in terms of legislative drafting.

If that makes any sense to you, you are in real trouble. It is essentially a drafting problem rather than a substantive issue, so I do not see any difficulty in allowing Mr. Warner or anybody else to move that particular amendment. Is that agreeable?

Mr. Warner moves that section 2 of the bill, as reprinted to show the amendments proposed by the Attorney General, be amended by adding thereto the following subsection:

"(5) Clause (aa) in the definition of 'institution' in subsection (1) applies to every municipality, including a metropolitan district and regional municipality and the county of Oxford."

Hon. Mr. Scott: Before we vote, can I just remind you that the government has opposed the extension of this to municipalities? The other parties have agreed to it, I think unwisely, but the definition is okay if you are going to do that crazy thing.

Mr. Chairman: Well, we are going to do that crazy thing.

Motion agreed to.

Hon. Mr. Scott: You are going to pay in Oxford for that.

Mr. Chairman: Okay. I am now at your pleasure to take the other matters. I will leave it up to you, but I would suggest to you that the principal matter before you is the public interest override section, which is in an amendment on section 50 that was originally prepared by Ms. Gigantes and put in committee by Mr. Martel, I think.

Is it your pleasure to go to that one first, as that would probably be the most contentious?

Ms. Gigantes: It seems to me we have a government motion to add section 23 which, depending on how we deal with it, would affect our approach to section 50. Perhaps we would be wise to begin with that government motion.

Hon. Mr. Scott: After the debate last time, and in order to get around the impasse that was developing, we proposed a new section 23. I have sent a copy of that to my colleagues in both the New Democratic and Progressive Conservative parties, and I understand it achieved some support, so I think the honourable member is right. Maybe we should go to it first and see how we fare on that amendment. Perhaps I can ask one of our members to move section 23.

1030

Mr. Chairman: Mr. Bossy moves that the bill, as reprinted to show amendments proposed by the Attorney General, be amended by adding thereto the following section:

"23. An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

I do not particularly want to have procedural arguments this morning. I would rather have substantive ones. I consider that since we are essentially dealing with the public interest override, that concept is what we want to get at. It is quite acceptable to the chair to accept a government amendment to section 23 that does that. However, I could have some difficulty and I will tell you about it now. If we deal with this matter in this way, I am going to have a little trouble if somebody comes back at a later date saying, "Having dealt with it in that way, I now want to move the motion that was originally put by Mr. Martel." That is a kind of double jeopardy.

We can have it one way or the other without any problem. It will get messy if someone chooses at a subsequent moment in history to move an amendment that is substantially the same matter. That is going to be very difficult.

If everybody understands this and the overriding concern is to deal with the substantive issue of a public interest override, I am at your pleasure as to how you want to do it. By accepting this amendment, you are indicating now that you want to deal with it in this manner. That is okay by me as long as everybody knows what is going on.

Hon. Mr. Scott: Is there no capacity in my friend to withdraw Mr. Martel's motion?

Mr. Chairman: Yes.

Ms. Gigantes: We do not have to deal with it.

Mr. Warner: We will not deal with it.

Mr. Chairman: We will not deal with it. We have this amendment before us. I take it the Attorney General has some words of wisdom for us.

Hon. Mr. Scott: It is very simple. This amendment is designed to bridge the gap between the government and Mr. Martel.

Mr. Chairman: It will never happen with one amendment.

Hon. Mr. Scott: It was easier to do than I thought in the sense that we have recognized Mr. Martel's concern that there should be a public interest override in a number of the exemptions, but not in others. I have no difficulty proposing this as part of the government bill. I should tell you that although it is only technical, if this is passed, we will need some amendments to sections 17 and 18. They are merely technical and will fit in very nicely if you approve this.

Mr. Warner: I certainly appreciate the spirit in which this subject was approached. The Attorney General obviously has given it some good second thoughts based on the arguments and debate that occurred in the committee and has come forward with a very good proposal, which we are prepared to accept.

My colleague will argue in a few moments that there are other sections that should be included in this motion. She will place the argument succinctly as to why they should be included. I simply want to indicate that we are pleased with the approach that was taken after reflecting on the debate that occurred in the committee on this subject. With those few brief words, perhaps my colleague can explain why this amendment should be further amended to add certain other sections.

Mr. Gigantes: I would like to move an amendment to the government amendment. In the second line I would add 12, 14, 16 and 19 to the sections covered by the new section 23.

Mr. Chairman: Will you give that to me again?

Ms. Gigantes: I would add sections 12, 14, 16 and 19 to the sections covered by the new section 23.

Mr. Chairman: Okay. I am going to go at it in a different way. I have two matters before me now which are substantively the same. As I understand it, your subsequent amendments to this one would deal with these sections, would they not?

Hon. Mr. Scott: Yes. I would like to say something about the amendment when I can have a moment.

Mr. Chairman: Yes. What I am going to suggest to you is that we can deal with this matter in two ways. It seems to me you will help the chair go through it in a procedurally more correct way if we deal first with the substantive amendment which has been put forward by the Attorney General, and then we can deal with both what you have put forward as an amendment now and what the Attorney General wants to put forward shortly.

I would set aside these proposals to amend this amendment until such time as we have dealt with the main motion, and then we can go through the different sections that you want to add or delete. Is that agreeable?

Ms. Gigantes: Do I understand we have a motion from the government to create a new section which provides that, in extremis, the commissioner could overrule the provisions of this legislation which say that certain types of documents shall not be revealed?

Mr. Chairman: Right.

Ms. Gigantes: What the government is proposing is that for certain types of documents there can be a decision by the commissioner that a compelling public interest that clearly outweighs the purpose of the exemption provided in the legislation for these particular kinds of documents would constitute a reason and a legitimate provision for the commissioner to order that the documents be released.

My amendment to the amendment is one which would enlarge the scope of the commissioner's powers by adding other classes of documents. If your proposal is that we deal with the government amendment, it seems to me that as an amendment to that amendment, mine should probably be dealt with first, or perhaps I have not understood the process.

Mr. Chairman: Okay. Let me deal with it this way. Being in committee, we are attempting to give as much latitude as we can. I would like to deal first with the public interest override concept, have our discussion about that and decide whether we are for or against it.

I take it that since all three sides have now indicated such, we can go through that quickly. I now have notice of amendments from both Ms. Gigantes and the government. There are some sections you want in or out. Let us dispense with the public interest override and go directly to which sections will be added or deleted.

In other words, we have not decided the final question until we have dealt with either your amendments or the ones that have been proposed by the government.

Hon. Mr. Scott: Something has gone awry here. When we discussed the question of whether there would be an override, we had before us Mr. Martel's amendment which, as I recall, proposed an override with respect to every exemption. We objected to that and insisted on the form of the bill. I think the Conservative Party was prepared to look at a more moderate position but essentially supported us, if I measured the debate correctly, on no override with respect to certain kinds of exemptions.

What we did was we attempted to prepare a compromise between the government bill and the New Democratic Party proposal. I submitted it to Mr. Warner and Mr. Martel at their request, on the understanding it would be taken to their caucus. What I sought from them was the approval of their caucus or its rejection of this amendment. I made plain that I would move the amendment and give it the support of the government if it had the support of their caucus.

Yesterday, when I spoke to Mr. Warner, I asked him if his caucus approved of the amendment we had submitted as a compromise, and he said he did. He said he had one minor amendment with respect to the criminal exemption, which he had circulated, and I said, "I am prepared to allow that to be dealt with."

So what we have this morning is the government introducing an amendment because we were told by the NDP caucus that it would support it, and it had our support, and then having a member of the NDP caucus moving an amendment that washes the compromise right down the drain.

Frankly, if that is the way things are going to be done by that party,

that it is going to make a deal on the one hand to support a compromise and then allow its members to propose another amendment that just sends a shot right through the compromise, I think we should vote on Ms. Gigantes's amendment first, because if it is passed, I am not interested in this amendment that I have proposed and I will want to withdraw it.

1040

It was proposed as a compromise to try to bridge the difficulties that some Conservative members and some New Democratic Party members had. I would not have done it if logic required it; I did it in order to make a deal. Now I am told: "We will take your deal but we will see if we cannot do better by getting one of our own members to propose essentially what Mr. Martel wanted. We will have votes on both."

Mr. Chairman: I have to use the old Kurt Waldheim defence here. The chair knows nothing of this.

Hon. Mr. Scott: Why? Did it not go to caucus?

Mr. Chairman: There are lots of ways we can proceed. We are in committee. We can have a general discussion. We can do what the Attorney General has suggested and deal with Ms. Gigantes's proposed amendments, any way you want to do it. Before you begin this process, I would say that I do not think there is a big argument here. There are some very specific points to be put on it.

The committee had a good, long discussion previously about the public interest override concept, and my reading of the committee is that it supports it with a lot of qualifications. We are dealing with the degrees of qualification here. The government appears not to be terribly happy with it but has accepted it and put that forward in its own motion. That is really what my initial warning about Mr. Martel's motion was.

If anyone wanted to be sticky about it, there is an amendment proposed by Mr. Martel which is officially before the committee. By allowing the Attorney General through one of his members to introduce the government motion this morning, you make the way difficult for Mr. Martel's motion to emerge. That kind of got submarined.

Let us hear how you want to proceed procedurally.

Ms. Gigantes: Simply, I think what the Attorney General is proposing--and we will get into a discussion of his attitude on this matter later--seems to me to be procedurally the simplest way of dealing with it. We have a government motion. It has been suggested to me that I might reword this amendment that I am placing so that it would be simpler in terms of the procedures in the transcript, and I would be quite happy to do that. Legislative counsel has proposed to me wording that is--

Hon. Mr. Scott: I am concerned that Mr. Warner cannot perform.

Ms. Gigantes: Do not worry about it, Mr. Scott.

Hon. Mr. Scott: I am worried about it, because I made a deal and the deal was designed to induce the government to make an amendment, which we did. It was based on the assumption that the amendment had been caucused by your party. What has happened is, I am told it has been caucused, I introduced the

amendment, then you came along and introduced essentially Mr. Martel's amendment as if nothing had happened.

Ms. Gigantes: No. Indeed, a lot has happened. The government has moved. Mr. Chairman, would it be in order for me to rephrase the motion I have just put?

Mr. Chairman: Let me consider it. You go to work on rephrasing and I will consider it. I want to hear from two other members.

Mr. Sterling: I think it is important to note for the record, the amendment that is placed on section 23 incorporates to a very large degree the amendment to the amendment that I put to Mr. Martel's amendment on section 50.

I think it is also important to note that we were not consulted. Our party was not consulted, nor did we caucus this particular section. Therefore, we may or may not support the amendment of the member for Ottawa Centre (Ms. Gigantes), or part of it, because we are dealing with a number of sections. The sections vary from the sections that I put forward on the amendment to the amendment.

I was not given the opportunity by the Attorney General to negotiate or talk about those particular sections, which has been a practice throughout these whole hearings with regard to this bill. We will be operating on our own in the open in this committee.

Hon. Mr. Scott: Mr. Chairman, if I can respond to that briefly, at page M-15 of the transcript, the proposal Mr. Sterling made, as I understand it, is precisely, or virtually precisely, the government proposal. The reason we would not have caucused with him on this is that essentially we are adopting his proposal. The language may not be exactly precise, but I just assumed, and I think I had this from Mr. O'Connor, that what Mr. Sterling said in moving the amendment at M-15 would stand. It may have been wrong, but I assumed his party would have no difficulty supporting this amendment.

Mr. Sterling: The problem is there are two different copies of that.

Hon. Mr. Scott: I did not notice that.

Ms. Gigantes: Could I ask, on a point of information, for the numbering of the motion to which you are referring your motion?

Mr. Sterling: I believe the clerk has a copy. It is to subsection 50(1a). It was an amendment to Mr. Martel's amendment.

Ms. Gigantes: I do not believe I have that.

Mr. Chairman: We will get you a copy.

Mr. Warner: I am quite concerned by the comments made by the Attorney General. There is a suggestion of a somewhat less than straightforward approach, a little bit of trickery or whatever. If that perception exists, I feel badly about that because it is not my way of doing things. It has never been my way of doing things and will not ever be.

Perhaps we have a different perception of how these events unfolded. I viewed the debate we had in the committee on Mr. Martel's amendment to be, in simple terms, a yes-no proposition; we wanted something and the government was

opposed to what it was we wanted. Mr. Scott, in turn, was coming back later on with an alternative, a compromise, as he very properly described. That compromise said to me that the government had moved from its previous position and was more amenable to what we were suggesting, but it was not prepared to go all the way to what we were suggesting.

I did take that proposal from the Attorney General to the caucus and in fact gave it the precise wording, the letter which you so kindly sent to me and which very clearly outlined your intention; I gave caucus that. They agreed they were very pleased to see that and they were supportive. But the caucus then said, "We like what we have seen but, quite frankly, we do not think it goes far enough." They wanted to move beyond that.

Obviously, that is a source of discussion, both within the caucus and now here in the committee, but at no stage did I, nor do I still, believe that it somehow violates the opportunity to reach a compromise. In fact, what I think my colleague is attempting to do by highlighting four particular areas is to put each of those areas to the test in terms of the committee. They may stand or fail, but they will be put to the test of the will of the majority of the committee. If they fail, then obviously what is proposed by the Attorney General will stand and, unless I am totally mistaken, probably will pass unanimously.

Hon. Mr. Scott: I do not want to get into this. A compromise is usually the advancement of a middle position. We advanced a middle position. We were told by the NDP that the caucus accepted the middle position. I was not told they accepted it because they wanted to take the chance later on to press us even further. If we had been told "The caucus approves it, but there is no accounting for Ms. Gigantes," I would have understood, but that was not said. I was told the caucus accepted this as a compromise. This is extraordinary conduct. If any of the so-called old-line parties did this, you would be in near hysteria at the dirty tricks you would be talking about.

Mr. Warner: I do not think it is a dirty trick.

1050

Hon. Mr. Scott: You never think what you do is a dirty trick.

Mr. Treleaven: You just got out-negotiated.

Hon. Mr. Scott: You are absolutely right. I do not hear confessions.

Mr. Warner: Then what might be helpful is to deal first with Ms. Gigantes's amendment, because clearly, if it carries, the government may wish to reconsider its position.

I do apologize if the Attorney General happens to put a different connotation on my actions. I can only say that I have, I think, dealt with the matter properly, but he obviously interprets that a different way. At least our party and, I believe, the Liberals wish to pass this bill. It is an important piece of legislation. We want it passed and we are co-operating as fully as possible in order to ensure its passage.

Maybe it is helpful to deal with Ms. Gigantes's suggestions first and see whether they live or die. If something happens and hers do not pass and neither does section 23, we still have the amendments to section 15. Maybe that is helpful.

Mr. Chairman: I do not want to interrupt all this wringing of hands here to get down to business, but maybe it is time we dealt with something a little more substantive than everybody's feelings this morning.

Ms. Gigantes, if you have an amendment, would you put it?

Ms. Gigantes: I will rephrase the amendment I suggested earlier.

Mr. Chairman: Ms. Gigantes moves that the motion of Mr. Bossy adding section 23 to the bill be amended by striking out "13, 15, 17, 18, 20" in the second line and inserting in lieu thereof "12, 13, 14, 15, 16, 17, 18, 19, 20."

Mr. Treleaven: Do we have all the House leaders in here this morning? There is bound to be something going on.

Hon. Mr. Scott: That is the last.

Mr. Treleaven: Bob Nixon is next.

Hon. Mr. Scott: Nixon is right. When the chips are down and the lips are clenched white with fear as they face an election, anything will be done.

Ms. Gigantes: I wonder if I could speak to the motion.

Hon. Mr. Scott: Yes.

Ms. Gigantes: I understand the Attorney General is feeling very aggrieved, but he might nevertheless like to join in what is a perfectly legitimate discussion. It is perfectly legitimate for us to propose, for you to counter-propose, for us to say, "We support your proposal, but we would still like to see further things done on the same matter." There is nothing illegitimate about that. That is precisely what happened.

Mr. Chairman: Could we get to the substantive stuff?

Ms. Gigantes: I would be delighted.

Mr. Chairman: Let us do that.

Ms. Gigantes: The sections that we are proposing to add to the new proposal from the government for a new section 23 affect four areas of documents. Section 12 covers cabinet documents, section 14 affects documents related to law enforcement, section 16 affects documents related to defence and section 19 affects documents covered by the name of solicitor-client privilege.

I will briefly outline why, in each case, I think that in the extreme case--and here again, I want to stress that we are dealing with the extreme case--it is important for the commissioner under this act to be able to say, "Even though these documents are excluded from public access"--in other words, the public may not have access to these documents under the normal operation of this act--"in this case, there is a compelling public interest that clearly outweighs the purpose of the exemption."

We know that in each of the categories, 10 of them in this part of the bill are exempted from public access. There are real and legitimate reasons for creating those exemptions. Furthermore, we know, in the areas of cabinet documents, defence, law enforcement and solicitor-client privilege, why any

government will feel it terribly important for a responsible government to insist that there be secrecy about such documents in most cases, in almost all cases.

The government proposal this morning--and we do welcome it--is that there should be exemptions. We have 10 sections of exemptions. The government amendment proposes certain sections so where there is a very strong public interest, which outweighs the purpose of the exemption in the legislation, the commissioner should have the power to release the documents.

Any commissioner who takes on that job is obviously going to look at that power as something that would be used in the extreme case and any commissioner appointed by government is obviously going to feel very constrained to use such authority only in the most urgent cases of public interest.

If we go through the proposed additions to the government amendment one by one, I think that all of us, as people who have followed politics and political events over a period of time, can understand the reasons why, in extreme cases, such a power on the part of the commissioner should be available under this act.

We know there are cases, both in the United States and in Canada, where the use of the so-called executive privilege by government as a reason for saying that documents shall not be released has been one which has been highly questionable. In the American situation, the most famous case is the Nixon claim to executive privilege.

We have never had anything quite to rival the extremes of that case, but I will remind members of this committee that there has been a battle at the federal level which the federal review committee on access to information and personal privacy has looked at very carefully. That battle has been one between the Auditor General of Canada and two governments of Canada over the release of papers that are considered to be cabinet documents dealing with the purchase by Petro-Canada of another oil company.

In cases such as this, we are saying, by proposing the amendment we do, that in an extreme case the commissioner, using his or her final powers under this legislation, could examine the situation and say, "There is a compelling public interest which clearly outweighs the purpose of the exemption." These decisions are not taken in a vacuum. A commissioner will not simply look at pieces of paper and say, "I have the opinion that this is compelling public interest."

There will be argument before the commissioner and the people who have the case for withholding documents, which could be called cabinet documents and which would normally not be accessible to the public under this legislation, would make argument about why those documents should not be released.

A commissioner would be very constrained by the language of the legislation and the political situation in which the commissioner worked to make sure that it was only in the extreme case that cabinet documents, under section 12, would be released.

I put it to the committee that there are such cases. We know of such cases. There will continue to be such cases. While I, as much as anybody else in the New Democratic Party caucus, hope one day to be part of a government in

Ontario and hope to have the responsibility for cabinet documents, which as a member of any government I would expect to hold very close to my heart and not wish the public to know about, I would nevertheless wish to be responsible to legislation which said that where there is clearly established compelling public interest for the disclosure of cabinet documents, that the commissioner would have the right and the duty to do that.

On the second proposed addition, section 14--

Mr. Sterling: Perhaps we should do these one by one or debate them?

Ms. Gigantes: I would be happy to vote on them one by one.

1100

Mr. Chairman: We may do that at some point in time if that is your wish, but I would remind you that we have had a very lengthy discussion on these concepts and I do not think it would serve us well to go over these at length this morning. We have had this bill before us for more than a year. We have had a long session of hearings. We have gone through it three times in total clause by clause. These are not new arguments that are being put. I would ask you to put your arguments succinctly. You may vote on the amendment any way you like, but I do not think we need to stall the process any further.

Mr. Sterling: Notwithstanding that, I think it is important for--

Mr. Chairman: I understand. You want to be able to vote on each section.

Mr. Sterling: Yes, I think it is important for the Attorney General to know where his support is for each section in order for him to finally put forward whatever amendments he may want or what may be acceptable to the majority of the committee. I would only say that this amendment gives the power to an individual to say, "Notwithstanding what the technical rules are in the exemptions, I will overlook these technical rules because in my own judgement, I deem it in the public interest to reveal this information."

While I understand what the member for Ottawa Centre (Ms. Gigantes) is doing, accepting that argument and applying it to section 12 is saying that you are going to take an appointed person who is not going to be responsible to anyone other than the Legislature of Ontario and who cannot be removed for any reason and give him or her the right to second-guess 20 or 30 elected people as to what they consider to be in the interests of the people of Ontario, notwithstanding the political element in what is happening.

Therefore, our party could not support the public interest override for this particular section.

Mr. Chairman: Let me reiterate in case we do have some members who were not here at previous hearings, that it is clear to me, as someone who has watched this for a long period of time in this committee, that this committee will not support a very broad public interest override. We have gone through that three times. We have had long discussions about it. There are not the votes to carry that in here. The question before you now is, what will you support a public interest override in?

I think you are quite right that sooner or later we will get to a point where we say, "Are you interested in a public interest override that has

anything to do with, say, cabinet documents, criminal investigations or the matter of public defence?" Frankly, I would like to get to the point where the committee says yes or no to these things. I cannot stop you from arguing at length, but I am just trying to caution you that you have done that ad nauseam.

Ms. Gigantes: I think it is quite helpful to have an indication from all the parties here of how they feel, and I will put the case as simply and as briefly as I can on the remaining sections that we would wish to add.

Section 14 affects law enforcement. Again, I do not have to remind committee members that both in Canada and in the jurisdiction of Ontario there have been cases, certainly in my memory, where the public would not have had access to documents under the operation of this legislation and where we probably would judge that they should have had access to documents.

It has taken us far too long in many instances, for example, in the case of the Royal Canadian Mounted Police dirty tricks, real dirty tricks, that affected political life in Ontario. Also, I would call to the Attorney General's mind events that have transpired with the Niagara regional police force and so on. There are many instances where I believe the commissioner should have the right looking at documentation to say there is a clear public interest that overrides the general exemption for law enforcement documents that should produce this information for the benefit of the public.

While I cannot think of a current or recent example in the Canadian context on section 16, problems with access to information concerning defence--and I consider that the amount known about defence information in Ontario is probably not nearly as important as at the federal level--I nevertheless feel that the same kind of argument applies. We know it is possible for governments to make secret arrangements and to carry out policies which are the exact opposite of the policies they enunciate publicly.

We certainly have examples currently in the United States where a policy decision by the elected representatives of the American people has been undermined by arrangements made under so-called security and semi-defence arrangements and agreements with foreign powers and agents of foreign powers. It seems to me that if we are going to have access to information that is meaningful, it is vital that the person responsible for the operation of the legislation should, in the extreme case, have the ability to overrule the areas in the bill which say these documents are private, secret and shall be maintained apart from public knowledge. That person should have the ability to say that in this case the public interest requires that these documents and this information be available to the public.

I feel the same way about section 19. We are dealing with something very general called solicitor-client privilege. We know it is very dear to the hearts of cabinet ministers and governments of any kind to be able to receive advice and to have legal understandings and provide information back and forth concerning cases and involving solicitor-client relationships and to maintain all that material in privacy.

Nevertheless, at some point in our history there will probably be areas where, times when and situations where a commissioner looking at such arrangements may say, in spite of the exemptions that exist under this legislation, "I believe it to be in the compelling public interest of the people of Ontario that this information be made available to them." There have been court cases in Ontario quite recently which raised some of those questions concerning solicitor-client privilege and executive privilege, and the Attorney General is aware of those.

I simply put those arguments in favour of the additions I propose. Procedurally, I would be quite happy to have separate votes on each addition proposed.

Mr. Chairman: Are we going to have further argument, or do you want to go to votes where we can do it one by one?

Mr. Treleaven: Where the decision is going to come from on the court override is fundamental to me. The court override, which is a different subject, is fundamental to how I vote on this override.

Mr. Sterling: Are there any amendments before the committee on the court override at this time, or did we deal with that? Essentially, we are left with the structure as is.

Mr. Chairman: Yes, I would say so.

Mr. Sterling: There is an appeal on a matter of a question of law alone. Is that right?

Interjection: Judicial review.

Ms. Gigantes: No. We have not dealt with section 52a, have we? I believe that was Mr. O'Connor's motion concerning the appeal to Divisional Court.

Mr. Chairman: Yes.

Ms. Gigantes: So that matter has not yet been decided.

Mr. Chairman: You can pretend that it has not been decided, but I would have to point out to you that we have debated the matter on about three different occasions. From where I sit, it is pretty clear how the vote is going to go; it is not going to carry. There was some question in my mind as to whether Mr. O'Connor would want to put the amendment in that case, but I did say he would have the opportunity to do that.

The committee has not dealt formally with that particular amendment, but in debate it was relatively clear, even to Mr. O'Connor, that it was unlikely to carry, and people who can count noses take that as a pretty clear signal.

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Mr. Sterling: Our problem is that we do not know where the New Democratic Party stands on the override.

Mr. Chairman: On the override?

Mr. Sterling: Not the override, the--

Hon. Mr. Scott: On the court?

Mr. Sterling: Yes.

Mr. Chairman: Not supportive, I think is the way I would read it.

Ms. Gigantes: Yes. I would like to indicate, on behalf of the NDP, that we would not propose to support that amendment.

Mr. Sterling: You would not have a review of the information commissioner's decision on the basis of the facts, would you?

Hon. Mr. Scott: Not that I can see.

Mr. Sterling: You do not agree that the appeal from the information commissioner to the court should be with the facts just on that question of law? Is that your position?

Mr. Chairman: As I recall the debates previously with Mr. O'Connor, we had a kind of rough go-through with the first set of amendments. The consensus in the committee is that it was not its point of view in the majority. Mr. O'Connor has the amendment. If he wants to, he can put it, but I think it was also fairly clear that the majority of the committee was not supportive of it.

Mr. Sterling: I would indicate that, basically, our caucus will not support the majority of Ms. Gigantes's amendments. The one area where there would be some support--but I am willing to listen again to arguments from the Attorney General (Mr. Scott)--is on section 19, which is the solicitor-client privilege. Basically, my amendment said I wanted the public interest override for 19 but not for 21. Basically, you have included 21 but left out 19.

Where is your major concern?

Hon. Mr. Scott: Our major concern is that whatever may be said about an override, and a lot has been said about it with respect to the other exemptions, it is not a concept that works very well with the solicitor-client privilege. As you will know--at least the lawyer members of the committee, and perhaps others, will know--where there is a solicitor-client privilege it is not the privilege of the solicitor, that is, the Attorney General's department, it is the privilege of the client. It exists in law and is unrestricted so that a client--that is, a person who has committed an offence or a person who is in some trouble or has done something wrong--will have the right, without any fear of disclosure, of going to a lawyer and telling the lawyer all.

In the criminal law, we allow, under solicitor-client privilege, a person who has killed someone and who, if he said it in public, would be convicted, to go to his lawyer and say, "I have killed a man and I need help," and assure him that when he says that it will never be repeated. The law regards it as more sacred than the priest confessor that the client should have the right to disclose his wrongdoing to his legal adviser for the purposes of getting advice as to what he should do.

That has been inviolate. There has never been a restriction on that. A solicitor for a client, even if he has been fired, cannot be called to court to give evidence of what the person told him as his client.

You propose an override on that. The override is, in effect, saying, "But sometimes we will be able to disclose it." The trouble with that concept is that, while it works in the other areas where you pinpoint it, it does not give the client the kind of assurance he needs to allow him to tell his lawyer the truth.

In the criminal context, a murderer will tell his lawyer, "Yes, I did it and I need help in advancing a defence." He knows a lawyer cannot repeat that, under pain of disbarrment. If the rule is that the lawyer should not repeat it

but there will be some cases in which he will be required to do so, the privilege is fractured.

So while the override works reasonably well on some of the other exemptions, I have real trouble about seeing how it will work in this one case, in the solicitor-client case. What you are then saying is that the solicitor-client privilege is not absolute. This will be the one place in our law where the solicitor-client privilege is partial. I do not know how the privilege would then have any meaning.

Mr. Sterling: The example you draw is an exaggerated example, because you will not find a minister or a head of a section having a confessed murderer admit to him, admit to a lawyer or to any head of government, that he has done the dastardly deed.

I guess the concern I have is that in a situation I was personally involved in as a member of the Legislature, I asked several Attorneys General in the Legislature a question and was unable to evoke an answer. That question related to the constitutional obligation of this government to fund separate schools. Each time I asked whether there was a legal obligation to do so, each minister, trying to avoid, for political purposes, in my estimation, saying that there was no legal obligation, said to me, "Bill 30 is constitutional," or "It is constitutional to fund." In other words, it was permissive, rather than a legal obligation.

I then sent to you, Attorney General, a letter requesting the advice you had received as to whether or not there was a legal obligation to fund. Your response to me was that it is not normal for the government to share its legal advice with the public.

My problem is that in that circumstance, I could not get an answer. The fact of the matter is that I think in that case I might have had an argument that there was a public override, because in my belief, there was a misconception out there that there was a legal obligation to do this funding.

I understand why people voted for the legislation and do not wish to get involved in that part of it, but on the fine point as to what the law was when we voted on Bill 30 on second reading, and in fact on third reading, we never really had a clear enunciation by the government as to what the law was.

Hon. Mr. Scott: The court told us what the law was.

Mr. Sterling: I just tried to get somebody to state that in simple terms.

Hon. Mr. Scott: If you want my opinion, I think the Constitution requires it, but that is beside the matter. My opinion is just the opinion of one lawyer.

With the greatest respect, that is not a solicitor-client privilege. What is protected by the privilege is not merely--or really at all--what the lawyer says, it is what the client says. The reason that is protected is so that the client will go to a lawyer.

It may be contrary to some of our experience, but it is perceived that when the government is being sued or when anybody is being sued, it is important that persons in the government who have information should be able to disclose that without fear that it will in some way come into the public

domain. If you cannot do that, then the government cannot act on legal advice in a court.

It is to protect the disclosure the client or the civil servant makes to the lawyer that the privilege exists. It is not designed to protect what the lawyer tells him, which is usually obvious in the event anyway, "Plead not guilty," or "Do not pay," or something like that. It is to protect the disclosure of information which the so-called client, who may often be a minor figure in the ministry, would not disclose, would keep to himself.

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Mr. Warner: But the legal opinion, with respect, usually reacts to a set of facts that are placed before the lawyer and reveal in many ways what the client has asked him. That therefore becomes part of the solicitor-client relationship and falls under the protection of a section like this.

Hon. Mr. Scott: We have had some examples of this. Let us assume that someone alleges that the sheriff or the assistant sheriff in the county of York is corrupt and has been taking money or doing something improper. An inquiry would naturally be conducted in the ministry to determine whether that is so. The assistant sheriff might go to the law department of his ministry and make a disclosure: "Yes, I stole these things and I should not have. Help me in this situation." Then the lawyer knows the true facts and will be able to accommodate the lawsuit that is brought against the government, because he knows the truth.

The question is how you get that client to make that kind of disclosure to the lawyer. You only get it by saying in effect that the lawyer who has received it will not be compellable. If you did not have that rule, there is no reason why anybody would go to a lawyer; or if they went to a lawyer, they would tell the lawyer lies, if they knew it would get out.

Ms. Gigantes: I think to discuss the motion I put on section 19 in terms of murder cases is, as my Conservative friend noted, really a straw man. I do not think the section I am proposing to add on section 19 would have helped him in the least in terms of his inquiries about the legal requirement for full funding of separate schools in this province. I do not think a commissioner would have found that a question of compelling public interest and, as the Attorney General says, I do not think the answer he could have got would have been anything more than a set of opinions, and the opinions might have varied.

But when the Attorney General suggests to us that this poor old sheriff of York or whoever, who finds himself in a tight position, is going to go to people in the ministry for legal advice, he is not going to go to people in the ministry for legal advice. The ministry is going to want to prosecute him. The Attorney General has not come up yet with an example of why there should not be a compelling override in this area, but I do not propose to argue it further. I think we are probably ready to vote on these points.

Hon. Mr. Scott: I would agree that in dealing with government the murder example is farfetched, but you will recall that we have already added municipalities to this bill. By adding municipalities, we have added metropolitan police forces throughout the province that are included as part of municipalities. In fact, the murder example, which would be farfetched if it concerned only provincial government services, is not farfetched when you understand that this bill will apply to municipalities in three years and to police forces all across Ontario.

I simply say if we are going to change the ambit of solicitor-client privilege--and there are some reasons why we should do so perhaps; I do not know--it should be considered directly and not by a sidewind, where it may indeed have real consequences.

Mr. Wiseman: Just in listening to the arguments, and being a layperson, not a lawyer, I tend to agree with the Attorney General, even though my colleague is saying differently. I feel the lawyer-client relationship should be upheld. The murder case was an extreme one, but I think the Attorney General gave one after that could happen. I have no problem with what the Attorney General is saying.

Mr. Chairman: Would you like this amendment put in one or would you like it divided?

Mr. Sterling: Could I ask the Attorney General with regard to section 21 why he felt compelled to include that? Was that part of your compromise with the third party?

Hon. Mr. Scott: Yes. That was part of Mr. Martel's amendment. I think you are right and I am wrong, but that was not part of your amendment. I regret not having brought our position to your attention earlier, as I should have done. I think we submitted that in the letter to Mr. Warner as part of the compromise. That is to say, we were accepting that part of Mr. Martel's original amendment.

Frankly, I must tell you that, as I made plain in my letter to Mr. Warner, we did that with very considerable reluctance. If I had been master of the exercise, I would not have accepted section 21, but I did it really so we could get the concurrence of the NDP to the removal of the override in the other cases. In other words, I gave in on section 21 so that Mr. Warner and his colleagues would join with us, and I think with you, on section 14. It did not make me happy, but I did it.

In support of it, I simply say that I think the override in respect of section 21 is theoretically workable, unlike section 19. It will require the resources of a skilled and sophisticated commissioner to make it effective and I am conscious of your concerns about it. I am hopeful it can be done, and if it cannot, we will have to look at it after a year or two.

Mr. Chairman: Okay. Do you want this amendment put in one, or divided into sections?

Ms. Gigantes: I do not think we have had any indication that any of the other members intend to vote for any of the sections included in my amendment.

Mr. Chairman: That is true.

Mr. Sterling: I would indicate that our caucus would support the public interest override on sections 13, 15, 17, 18 and 20. If the government amends its motion to exclude section 21, we would not insist on section 19 being in.

Mr. Chairman: Okay. I think we have it clear and I think we are in a position now to take your amendment, Evelyn. If you still want to put it, we can put it now. I think we have a clear indication from all sides as to how they will vote on it. Are we agreed? Okay. I am going to put the amendment put forward by Ms. Gigantes; I will read it to you.

Ms. Gigantes moves that the motion of Mr. Bossy, adding section 23 to the bill, be amended by striking out "13, 15, 17, 18, 20" in the second line and inserting in lieu thereof "12, 13, 14, 15, 16, 17, 18, 19, 20."

Motion negatived.

Mr. Chairman: We will go back to the original amendment as posed by Mr. Bossy. We have had some discussion about the inclusion or exclusion of section 21. Is there any change to the amendment as put?

Hon. Mr. Scott: My colleagues are telling me I made a deal to include section 21 in here. Mr. Warner is not here to speak to the deal.

Mr. Chairman: I know nothing of the deal.

Hon. Mr. Scott: But I think I will honour the deal in any event, though there may be an amendment.

Mr. Chairman: Okay. I will put the amendment as it stands then.

"An exemption from disclosure of record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

Mr. Treleaven: We will need 20 minutes to gather members.

Mr. Chairman: Okay, but first I have to have a voice vote. Those in favour of the amendment proposed by Mr. Bossy? Those opposed?

Mr. Treleaven: Recorded vote then, please.

Mr. Chairman: Yes. I see the amendment carrying and we have a request to stand it down for 20 minutes. We stand adjourned until 10 minutes to 12 noon.

The committee recessed at 11:30 a.m.

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Mr. Chairman: We will call the vote now. All those in favour of the amendment moved by Mr. Bossy?

Mr. Sterling: I have an amendment.

Mr. Chairman: I am sorry, but you cannot move an amendment in the middle of a vote. When we have dealt with this matter, you can seek the consent of the committee to introduce it, but in the middle of a vote you cannot move motions.

Mr. Treleaven: It was well understood that Mr. Sterling was going to have an amendment. You have to have an amendment to an amendment before you have the vote on the original amendment.

Mr. Chairman: I do not think there is a problem here, but I am not going to accept a motion in the middle of a vote. When we have dealt with this vote, I think you would get unanimous consent from this committee to reintroduce it. I think your have Mr. Bossy's amendment, but I will read it. Mr. Bossy has moved that, "An exemption from disclosure of a record under

sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

The committee divided on Mr. Bossy's motion, which was agreed to on the following vote:

Ayes

Bossy, Gigantes, Newman, Smith, D. W., Smith, E.J.

Nays

McLean, Sterling, Treleaven.

Ayes 5; nays 3.

Mr. Chairman: Now, Mr. Sterling.

Mr. Sterling moves that section 23 of the bill, as amended by Mr. Bossy, be amended by striking out "21" in the second line.

Is that different from the amendment I have?

Mr. Sterling: I am forgetting "19."

Mr. Chairman: I am going to seek the consent of the committee to allow the introduction of an amendment to strike "21" in the second line. Are we agreed? Agreed.

Ms. Gigantes: What is the amendment?

Mr. Chairman: He is striking "21" from the amendment that just carried. Those in favour of that amendment? Those opposed? Let me call it again. All those in favour of striking "21"? All those opposed?

Motion negatived.

Mr. Chairman: Are there further amendments?

Hon. Mr. Scott: Just to introduce them, the government has two amendments, to subsections 17(2) and 18(3). You will recall they are sections that already have an override. We simply seek to remove the override because they now will be governed by the section 23 override we have passed.

Ms. Gigantes: May I speak to that?

Mr. Chairman: All right.

Ms. Gigantes: Mr. Warner has an amendment on subsection 23(2) following the defeat of our subamendment to the government amendment on section 23. I am wondering whether you would prefer to deal with it first.

Mr. Chairman: If you tell me what it is, it would be helpful.

Ms. Gigantes: Yes.

Mr. Warner: I move that section 23 of the bill as made by this

committee be amended by adding thereto the following subsection:

"(2) An exemption from disclosure of a record under section 14 does not apply where disclosure of the record would reveal a serious violation of the law by an institution and a compelling public interest in its disclosure clearly outweighs the purpose of the exemption."

Mr. Treleaven: Mr. Chairman, can I draw your attention to the clock? It is 11:55 a.m. There is a a luncheon going on that members of all parties are attending, probably half the caucus of each party. I expect Mr. Wiseman left for there and that is why he was not here to vote. It is going to affect a lot of other people as well. We should adjourn and not try to go to 12:30 p.m.

Mr. Chairman: I am going to put this to you: I cannot stop people from moving their ceremonial amendments, if I might put it that way. We have been at this thing for a year. There are no illusions as to what will carry and what will not. You have five minutes. We adjourned technically the last time to deal with amendments in four areas. We can deal with those in five minutes if you want to, but if you want to move a whole bunch of ceremonial amendments, we cannot. It is your pleasure.

Mr. Treleaven: Not all these are ceremonial. It was quite unknown how things were going to go this morning on the various votes until they occurred. There have been surprises already this morning.

Mr. Warner: Why do we not keep moving and try to get it tidied up?

Ms. Gigantes: I think we can finish.

Mr. Chairman: Okay.

Mr. Sterling: We still have a considerable matter to deal with in terms of this bill and the proclamation of the bill, when it does comes into effect, if it ever will come into effect prior to another provincial election. All those matters are going to require a considerable amount of debate.

Mr. Warner: Let us keep pushing and see what gets done.

Mr. Sterling: We have four minutes and we have lost one of our members.

Mr. Warner: Let us go.

Hon. Mr. Scott: Can I make a suggestion? Subsections 17(2) and 18(3) are not ceremonial. They have to be passed. Subsection 23(2) is a brand-new amendment that has never been discussed here. Frankly, I must tell you that unless Mr. Warner regards me as bound to it by the arrangment referred to in my letter, I would be moved by what the Conservatives say about it. If the Conservatives support this, it is going to pass. If they do not support it, it is not going to pass.

Mr. Sterling: We have not seen it.

Hon. Mr. Scott: I think you have not seen it.

Mr. Chairman: I am hearing objections to the introducing of new amendments and I think I am going to get a little stickly about it. I said

initially that we had four areas where it was clear we would introduce and accept amendments. I hear the committee objecting to the introduction of amendments that are reasonably substantive at this point. You can do it if you want, but I think they have a legitimate right to say that if they have not seen it, they do not want to deal with it.

Mr. Warner: It was circulated two hours ago.

Ms. Gigantes: Two hours ago.

Mr. Chairman: I think that is fair if they are objecting to it.

Mr. Warner: They have had two hours to think about it.

Mr. Bossy: Would it also not be fair to say that the Attorney General made it quite clear at the outset that if the amendment were passed, we would be introducing these other two amendments to clear up--

Mr. Chairman: There are no objections to them, but I do hear an objection to Mr. Warner's amendment.

Mr. Warner: What is he objecting to?

Mr. Bossy: That is a new amendment.

Mr. Sterling: I am not objecting to his amendment. I want to hear about it.

Interjection: Notice was given.

Mr. Chairman: But at this time.

Mr. Sterling: I understand this committee rises at 12 o'clock.

Mr. Chairman: Normally we would. We could carry on for a bit.

Mr. Sterling: I have to go to a luncheon. I was supposed to leave with Mr. Wiseman 15 minutes ago.

Mr. Chairman: I am at the pleasure of the committee.

Ms. Gigantes: Perhaps we should stop the procedural discussion and have a substantive discussion.

Mr. Chairman: I tend to agree with that. Let me deal with it this way. Mr. Bossy, do you have some amendments that we have all seen and loved?

Mr. Bossy moves that subsection 17(2) of the bill as reprinted to show amendments proposed by the Attorney General be struck out.

Motion agreed to.

Mr. Chairman: Mr. Bossy moves that subsection 18(3) of the bill as reprinted to show amendments proposed by the Attorney General be struck out.

This is subsection 18(3). It is a previous override that had been in the bill and now is overridden by the amendments to section 23.

Mr. Treleaven: It is surprising how verbose and lengthy we get over a year and now we are banging them out in a quarter of a second apiece.

Mr. Chairman: The political process always surprises me.

Mr. Treleaven: If anybody tries to ram anything, we are going for 20 minutes. We will keep going for 20 minutes until we stop this railroad running, okay?

Mr. Chairman: That is fine.

Ms. Gigantes: Nobody is ramming it.

Mr. Chairman: Do you understand the amendment? Are we in agreement with Mr. Bossy's amendment?

Motion agreed to.

Mr. Chairman: The railroad continues.

Mr. Warner: In case you are looking for it, this is the one that has my name on it and says subsection 2(1), definition of "institution."

Mr. Chairman: Mr. Warner moves that the definition of "institution" in subsection 2(1) of the bill as reprinted to show amendments proposed by the Attorney General and amended by Mr. Warner's motion approved by this committee be further amended by adding thereto the following clause:

"(ab) any university in Ontario, and"

Hon. Mr. Scott: As I indicated last day, we are opposed to adding the universities of Ontario to this bill at this stage. The bill is not in a form suitable for application to them for reasons I gave last time. It does not respond to the issues universities have with respect to information and it does not set up a mechanism with which they can effectively deal. It brings all their documents under government review and I do not think that is what we intend. What I indicated we would do is that when we have appointed the commissioner, we will look to him to develop systems in which freedom of information can voluntarily or by compulsion be brought to municipalities, universities and other institutions, but we do not support the inclusion of universities at this stage.

Mr. Chairman: Mr. Treleaven moves adjournment of the committee meeting.

The motion to adjourn takes precedence. All those in favour? All those opposed?

Motion negatived.

Mr. Chairman: We will go back to Mr. Warner's motion.

Mr. Warner: I think I understand the political manoeuvring here.

Mr. Chairman: Is there any further debate? All those in favour?

Mr. Treleaven: Are we ready to vote on that? No. A recorded vote; 20 minutes to gather members.

Mr. Chairman: First I have to put the question.

Mr. Treleaven: No, I challenge your procedure previously in putting a vote and then asking for a recorded vote. That procedure was out of order. I submit that no vote should take place. I think it is under the old standing order 89(c). I submit that the recorded vote now should take place. We are in the middle of a vote, but no unrecorded vote should take place.

Mr. Chairman: We are not in a middle of a vote until I put the question.

Mr. Treleaven: The question should not be put for 20 minutes until we have gathered our members.

Mr. Chairman: Our crack research department is poring through the standing orders as we speak.

Mr. Warner: You are asking for another delay.

Mr. Treleaven: Because you people are ramrodding this thing.

Mr. Warner: This is called stalling.

Interjections.

Mr. Chairman: I will resolve your problem. We will adjourn for 20 minutes, at which time we will have the requested recorded vote.

The committee recessed at 12:01 p.m.

1221

Mr. Chairman: We will resume. We are voting on a motion by Mr. Warner that the definition of "institution" in subsection 2(1) of the bill, as reprinted to show amendments proposed by the Attorney General and amended by my motion approved by this committee, be further amended by adding thereto the following clause: "(ab) any university in Ontario and."

The committee divided on Mr. Warner's motion, which was negatived on the following vote:

Ayes

Gigantes, Warner.

Nays

Bossy, Newman, Smith, D. W., Smith, E. J., Treleaven.

Ayes 2; nays 5.

Mr. Treleaven: I move we adjourn the committee meeting.

Mr. Chairman: There are no further motions to be put, so a motion to report the bill, as amended, would be in order.

Mr. Treleaven: No, I have a prior motion that should be dealt with now. A recorded vote and 20 minutes to gather members.

Mr. Chairman: What is your motion?

Mr. Treleaven: To adjourn the committee meeting now.

Mr. Chairman: We just dealt with that matter.

Mr. Treleaven: We have had an intervening proceeding. We have had a vote.

Mr. Chairman: I see what you mean.

Those in favour of a motion to adjourn? Those opposed? The motion is lost.

Mr. Treleaven: I asked for a recorded vote and 20 minutes to gather members.

Mr. Chairman: He has a right to ask for 20 minutes. Before we adjourn for 20 minutes, though, this game can go once, it cannot go twice. You can stall it for 20 minutes, in other words, and when we come back I will look for a substantive motion to be put. That may turn out to be the motion to report the bill.

The committee recessed at 12:23 p.m.

1241

Mr. Chairman: We will call the vote or the motion to adjourn.

The committee divided on Mr. Treleaven's motion, which was negatived on the following vote:

Ayes

Treleaven.

Nays

Bossy, Gigantes, Newman, Smith, E. J., Warner.

Ayes 1; nays 5.

Sections 2, 17, 18 and 50, as amended, agreed to.

Bill, as amended, ordered to be reported.

Mr. Treleaven: I do have to get on the record the displeasure of our caucus and our members with this committee railroading this through, but then we do have our procedural remedies. We can deal with this in the committee of the whole House, if desired.

Mr. Chairman: That is right. Any further business?

Mr. Warner: This is the longest railroad I have ever known. This railroad stretches back over a year. I think we have had a most thorough and exhaustive discussion and study of this subject and I am very pleased that we have an opportunity now to conclude our deliberations and report the bill to the House. With any luck, it is certainly our intention to promote the proper

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Clerk: Forsyth, S.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

Witness:
Laughren, F. (Nickel Belt NDP)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 3, 1987

The committee met at 3:08 p.m. in room 228.

MEMBERS' PRIVILEGES

Mr. Chairman: We have a quorum. If it is possible, I would like to get this through earlier rather than later, and I would like to rearrange the agenda just a touch so we could allow Mr. Laughren his day in court and then he can go on to several other very important duties he has this afternoon.

We have had referred to the committee the abusive and harassing calls received by the chairman of the standing committee on resources development studying Bill 115, An Act to amend the Ontario Lottery Corporation Act. I think Mr. Laughren would like to make a little statement, and then we can deal with the matter.

Mr. Laughren: I will be very brief. Everything I said that day on February 5, when I spoke in the House on a point of privilege, was absolutely correct. I retract nothing from that statement. I do think, however, now that the bill has been disposed of in committee and has been reported to the House for third reading, that I would be most happy to let the thing lie and not have it pursued and to consider it just one of those blemishes on the process that none of us like but they do happen from time to time. It is up to the committee, of course, to decide that; but I certainly have no intention of pushing the matter before the committee.

Mr. Chairman: It would appear then, if it is the pleasure of the committee, we would simply report that at the request of the member no further action be taken on this referral.

Mr. Sterling: Could I ask a question?

Mr. Chairman: Yes.

Mr. Sterling: Number one, do you know the identity of the people who were making the accusations?

Mr. Laughren: Virtually all of them identified themselves as people who would lose their jobs because of the legislation, but most of them did not leave their names.

Mr. Sterling: So we would not know who to after.

Mr. Laughren: No.

Mr. Sterling: I am interested, as a member of the Legislature, in knowing what you felt you should do when you received these calls; do you feel there was an adequate process for you to go through, or is there anything you can suggest that we could improve? I would think it would be very hard on a person to go through this. I do not like getting calls in the middle of the night from people who make nasty remarks or whatever and that kind of thing, and I have not had the misfortune of having that happen too often; but is there any kind of suggestion you can make as to how we could put an end to it quickly?

Mr. Laughren: The only thing I can think of--and I appreciate the question--is that all those calls were designed to prolong the process of hearings, and I was getting the calls because I was the chairman of the resources development committee. The entire process of the lobbying was to prolong the hearings.

The only thing I can recommend is if that were ever to happen--and I wish now I had handled it a little differently myself and had gone back to the committee and said, "Would you endorse or bring forth a motion that would terminate these hearings immediately if there is any more of this nonsense going on, so the people who are doing the calling, whatever form it might take, will cease and desist or they will end up hurting their own cause." It seemed to be the only language they understood.

Mr. Sterling: Is there any facility on our part--I do not know whether we could have phones--I understand they are making new phones now, for instance, where you can tell who is calling or, rather, what number the call is coming from. They say that in another two years that is going to be available to people so that if somebody phoned you up, you could say it was coming from wherever the digits were.

I guess there is no facility where we can say to the police, "Would you find out where these calls are coming from."

Mr. Chairman: You could put in a request to have the police monitor the calls. It would be a bit unusual, but you could at least make the request.

Mr. Laughren: I must say that at the time I raised this in the House I was upset about the process. I admit that. I do not, however, think it happens often enough that we should overreact to what I think I referred earlier as just a blemish or a blip on the scope. I would not want to see the members overreact to something that happens so seldom. It is the only time it has ever happened to me in 15 years; that is why I said I would be quite happy if it were dropped--although I do not regret raising it at the time, because it really was becoming quite abusive.

Mr. Mancini: Of course, I accept the position put forward by my colleague today, but I would like to have included in the report maybe something to the effect that the members of the committee take a very dim view of anyone--any person, any organization--calling up a member and leaving the impression one way or another that the member is being threatened.

Anybody can call and give representations and give his points of view, but I think it should be stated, even only for the purpose of repetition, that our system does not work that way and that we are not going to allow this kind of despicable pressure on members. Even if it does not get any attention, which it probably will not, I think it should read that way in our report.

I concur with Mr. Laughren; if he wants to drop it, fine, but I think we should have a succinct paragraph, if it is possible, maybe describing what I just said.

Mr. Chairman: If it is your pleasure--and I am not suggesting we expend a lot of energy on this--it is worth noting that intimidating a member of the assembly is not really something that should be taken lightly. In this instance, if the member decides in his own judgement that he does not want to pursue it, I think the committee should respect that.

However, I would not want this to become a practice either. I would not be anxious to provide even a casual opinion that says it is okay to phone up members of the assembly, to threaten them and try to intimidate them and that kind of thing.

I guess the line we would be trying to draw here would be that on the other hand we would not want to do things that would prevent the public from calling up members and registering their strong objections to whatever was being done or saying, "It is a great thing to do, go ahead and do that." We spend a lot of time, money and effort to provide public hearings on a wide variety of things, and we solicit opinions from folks a great deal.

We could try to put together something that would point out that when you do cross the line and you get into intimidation, there are some things at our disposal that we could use to defend the members. Perhaps we could simply outline what they are.

Mr. Martel: I think it should be handled somewhat differently from the way it is handled when it comes to threats against cabinet ministers. I know when I had my office on the main floor there were discussions to bust a hole through the wall--a door that had been there for years but closed off--because the Attorney General had been threatened on three or four occasions, and on those occasions there is immediately someone involved. That should be done on the quiet, but I do not think we should do it publicly because you draw attention to those things; the worst thing you could do would be to draw attention to it because then you get the repeat performance by someone else; you see that all the time.

I would simply say that I think members should be advised, pure and simple, when intimidation arises; they should be advised who they can contact to discuss it with immediately so they do not go through what Floyd went through, worrying about it until he finally raised it in the Legislature. A member should immediately know who to contact and who will handle it expeditiously and take whatever precautions are necessary. To try to write a lengthy report with rules and regulations and so on would defeat the whole purpose. I think we should have the other thing put in place so that in the event such a thing happens in future, you know who you contact immediately.

Mr. Sterling: The first time you raised it, was it in the House? You did not go to the Speaker or security people?

Mr. Laughren: No. As a result of raising it here, there were some rumours around that the next committee hearing was going to be disrupted; there was extra security in the committee room for that meeting and everything was fine.

If the committee really wants to do something positive now, it can convince the House leader to call a bill for third reading.

Mr. Chairman: Okay. Any further discussion on this matter?

Mr. Sterling: I guess it just worries me. In this case the people presumably were not crazy enough to carry out their threats. But you never know, as my colleague the member for Sudbury East (Mr. Martel) says. I think there should be some process where you can walk to the Speaker or to the security people and they will do something.

Mr. Chairman: What I was going to suggest was that those things are available to members and they perhaps are not aware of it, and we might do

them a bit of service if we drafted up a short report which pointed out what you could do if you felt there was any real threat against you or people who are working for you.

I suppose like most members, I have had this kind of incident happen to me. You listen on the phone for a while and you wonder how real it is. You wonder if it is just some crank. Normally, when I get them it is late at night; I generally dismiss it as being somebody who has been sitting underneath a jug too long and is having problems with it, and it goes away the next day. I often do wonder how you would handle this, if it happened in the middle of the day and you thought somebody was really very serious about doing it.

Maybe what we will do is have Smirle and John draft a little report, which points out what members could do if they did have that happen again.

1520

Mr. Newman: I have had a peculiar experience. In fact, I was awakened one morning at about three o'clock. The party did not identify himself or anything; he said, "I can't sleep"--blank, blank, blank--"you're not going to sleep either," and hung up the phone.

Mr. Chairman: All right. We will draft that up and we will give that to you next week.

Mr. Bossy: I do not want to prolong this, but I am not sure--I have not looked into this--whether we have funding available in our budget for a constituency office protection system. I have had some bad experiences, and I have dealt with one in the last 10 days. We are in the process of trying to check what costs would be involved in putting a buzzer system into the police station in that kind of situation. That is an alternative that the detectives recommended to me, but I have not got a price on it. I do know if we have adequate funding in our budget to provide for that kind of expenditure in our riding offices.

Mr. Chairman: I do not know if you have adequate funding, but I do know you have funding and you could do that, yes.

Mr. Laughren: Thank you very much, Mr. Chairman.

ORGANIZATION

Mr. Chairman: I would like to move on to set up the subcommittees. The first is one we will probably use a little bit in the foreseeable future; that is, we might strike a subcommittee on agenda and procedure since we are going to review the standing orders. We do have a draft of revisions we might make, and it would be useful to have a little subcommittee to go through that before we bring it to the committee.

Mr. Treleaven has suggested to me that he would like to serve on that.

Mr. Mancini: What subcommittee was that?

Mr. Chairman: The one on agenda and procedure, basically reviewing the standing orders.

Mr. Mancini: Excuse me, Mr. Chairman, before we get into that, could I raise a subject? It concerns a subcommittee we already have, the subcommittee on security.

Mr. Chairman: Yes.

Mr. Mancini: In view of what happened in Ottawa the other day, I would like to suggest that maybe we hear a report as to what the subcommittee is doing.

Mr. Chairman: I was going to get to that when we got down to that item.

Mr. Mancini: Okay.

Mr. Chairman: Are there any other members who would like to serve on the agenda and procedure subcommittee? It will not be an arduous thing. I could chair it. We have a draft of wording changes to the provisional standing orders. It just means that one from each caucus should go through that before we bring it in here. Can I get a volunteer from the Liberals? Maurice? Okay. Elie? Okay.

Mr. Sterling moves that Mr. Treleaven, Mr. Bossy and Mr. Martel be appointed as members of the subcommittee on agenda and procudure.

Motion agreed to.

Mr. Chairman: On the members' services subcommittee, the vice-chairman of the committee chairs that, or did previously. Who was on it before? Mr. Turner, Mr. Warner and Mr. Bossy. Is that an agreeable way to proceed?

Mr. Bossy moves that Mr. Warner, Mr. Turner and Mr. Bossy be appointed as members of the subcommittee on members' services.

Motion agreed to.

Mr. Mancini: We may not work any more, since our work is so unpopular.

Mr. Chairman: We cannot cash much of your work at the bank, I will tell you that.

On the subcommittee on security, we had Mr. Martel, Mr. Morin and Mr. Treleaven. Is that agreeable?

Mr. Sterling moves that Mr. Treleaven, Mr. Martel and Mr. Morin be appointed as members of the subcommittee on security.

Motion agreed to.

Mr. Chairman: I should point out that we will have a draft of a report. I wanted to talk a little bit today about how you wanted to handle that. Basically, we visited Ottawa and we had an opportunity to visit the National Assembly as well. We have a draft which we would like to bring forward to the committee but I would like to do it in camera, frankly.

Then I would like to suggest that we give some thought to how we proceed from this. I do not think we want to table--maybe we do, but I had not thought we would want to table security reports in the Legislature, as we normally would all other reports, but they are matters that essentially would be under the jurisdiction of the Speaker or the Board of Internal Economy. I would like

to send it to them. The only problem I have is, when we did this previously, the Speaker wrote back and said, "You cannot do that, you have to table all of your reports in the assembly," so I have a bit of a quandry here. It seems a little silly to be tabling reports on security in a public way.

Mr. Martel: Why not have the subcommittee review it, bring it back to the full committee and invite the Speaker to an in camera meeting to go through it? It seems to me that is the logical way and at that point we can decide how we want to proceed. If we decide we have to table it, if Mr. Speaker will not accept it any other way, we can decide whether we want to table it or not. Again, I do not like to draw attention to what we are doing in matters surrounding security, because all you do is highlight it and it does not do you any good. In fact, it is a detriment.

Mr. Chairman: To be fairly blunt about it, a number of the things that we saw in Ottawa and in Quebec I think are very useful things for us to do, but they would not be very useful if you put out a public document saying this is what we are doing and why we are doing it and here are all the shortfalls in it, and you promptly provide a blueprint for someone to get around them. Maybe it would be a good idea to invite the Speaker in and have a little session with him.

Mr. Martel: I have to go to another meeting that, unfortunately, I cannot get out of because I have people in from the regional municipality of Sudbury. My colleagues Laughren and Gordon are at the standing committee on resources development, and they cannot attend either. The meeting is scheduled in my office in four minutes, so I have a bit of a problem. If I can be so bold, I would like to move to item 6 to find out what we are going to do. If we are going to do things, I would like to know so that I can make plans.

Mr. Chairman: What I need, I am told, for reasons which escape me totally, that someone wants us to pass a formal motion that we attend the National Conference of State Legislatures in Indianapolis from July 26 to 31, 1987, and that the clerk of the committee be instructed to make the necessary arrangements.

Mr. Turner moves that this committee attend the National Conference on State Legisltures in Indianapolis, July 26 to 31, 1987, and that the clerk of the committee be instructed to make the necessary arrangements.

Is there any discussion of the matter?

Mr. Martel: Would we leave July 25?

Mr. Chairman: Yes. We would make the travel arrangements as quickly as we can.

Mr. Martel: And we would come back on August 1.

Mr. Chairman: Is there any further discussion on the motion? All those in favour?

Any opposed?

Motion agreed to.

Mr. Martel: I might throw one little wrinkle in it. If we are going to go, it might be nice, if we are going to be there Saturday, to just tour around and do some work. I just throw that in.

Mr. Chairman: We will make whatever travel arrangements we can.

The next item is the Speaker's letter dated May 6.

Mr. Sterling: Before we leave the subcommittee, in terms of the members' services report, and basically the rejection, I guess, from the Board of Internal Economy, I have a real concern about the private members' accommodation allowance here in Toronto. If we project ourselves to a fall election, I think any new member who comes into this town and tries to rent a place, get some furniture and have any money to provide for any cleaning, cannot do it for $11,450. You just cannot do it in the city of Toronto for that amount of money any more.

1530

Mr. Chairman: You would like a review by the subcommittee?

Mr. Sterling: I do not know how much of a review is necessary. I do not know the feelings of the other members on that particular matter. I think it would be more prudent to do something before we leave here at the end of June than wait until perhaps an election is called in the late part of summer. You have people coming down here trying to make arrangements to find an apartment. I do not know if you have read the paper recently about trying to rent anything in the downtown area. We are into about $1,200 a month now, anywhere from $1,000 to $1,200 to get anything at all; either that or you pay key money of $5,000 to $10,000.

Mr. Bossy: I got notice yesterday of an increase in rent of 19 per cent. That is $139 on my apartment.

Mr. Chairman: If you wish, we could refer that matter to the subcommittee that has been struck to have a review and a report back as soon as possible.

Mr. Sterling: I think we should look at that.

Mr. Chairman: Are we agreed? Agreed.

Mr. Mancini: Can I ask Mr. Sterling if there are any members who are having trouble right now? Or are you worried about the fall?

Mr. Sterling: I am worried about members who are going to leave their accommodation and then new ones coming in and trying to find accommodation in downtown Toronto. You just cannot get a one-bedroom apartment for under $1,000 a month.

Mr. Turner: It is almost getting to the point perhaps, if it is possible, to block off a series of apartments in buildings adjacent--

Mr. Chairman: Is it your pleasure to do anything with the Speaker's letter dated May 6 other than receive it? It is simply advising us of motions passed by the Board of Internal Economy.

Mr. Turner: There is not much to be done, is there?

Mr. Chairman: Could I have a motion to receive and file?

Mr. Turner moves that the Speaker's letter dated May 6, 1987, be received and filed.

Motion agreed to.

Mr. Chairman: I am going to ask your permission to pull out of that, though, one matter which I will pursue with the Speaker, and that is the matter of dealing with committee reports. If it is held that everything that we do must be by way of a report to the House and that no action can be taken until the House adopts a report, I would point out to you that the last time a committee report was adopted was some time last year and that this is a wildly impractical way to do anything.

Whether it is advising somebody on a security matter or doing anything, if the only process that is available to us is the process of tabling a report, then awaiting the pleasure of the House leader to call it for debate, then finally getting a motion passed by the House, it seems to me that is not a very practical way to do business. So we will have to explore what other options he might suggest.

We will have the standing orders review looked at by the subcommittee on agenda and procedure. Since we have a draft, I will basically circulate that to the three members who are on that subcommittee. We will have a little meeting and then report back to the committee. Essentially, the status of the review now would be to go over and make wording changes to the provisional standing orders as they now are. If you wanted more substantive review, I would suggest that we would need more time than that. What you may want to do is to make permanent the provisional standing orders that are now in place, with a review on wording, and leave the review of any further substantive changes perhaps until we go through Mr. Henderson's motion that is referred to the committee.

Mr. Bossy: On the basis of what we have here, where it says standing order review, and all the sorts of recommendations or suggestions, which committee dealt with that, or was I missing?

Mr. Chairman: No. Mr. Forsyth has gone through and collected all of the places where people said, "This word should be changed and we should rearrange the wording of this standing order," or where there is a need to kind of go to one common terminology. It is just a collection of all those kinds of changes.

Mr. Bossy: In other words, it is a working paper.

Mr. Chairman: Yes. It is just a draft and I would like the subcommittee to go through that, bring it back to the committee and then we will table it.

One other matter outstanding is the election of vice-chairman.

Mr. Sterling: If the members' services committee is meeting with regard to my other suggestion about the accommodation allowance, there is one other thing. We tried it last year and it just worked terribly in my particular case in my constituency office. That is the kind of arrangement for furniture, where they are trying to control that from down here. I think it is the fourth desk we are on now in terms of my constituency office secretary. We could have probably bought two new ones for the cost of the shipping back and forth. It may be practical for the Toronto area people to be involved in this, but it becomes a geographic problem in terms of shipping stuff back and forth.

The constituency office staff do not see what they are getting until it arrives off the truck. In one case, they were leaving extra drawers in my

constituency office that belonged to somebody else's desk--God knows where. It is just not working. The staff in the constituency office have their own ideas about what equipment they want to use, what they do not want to use, and that kind of thing. I think the old system was better in that area. I would like that referred to the members' services committee as well.

Mr. Chairman: Sure.

Mr. Bossy: Just to comment on that, based on my experience as a new member, right off the bat I took it upon myself to order exactly what I wanted. I knew what the budget was. It came in and we put it on a lease agreement. The lease went to the accounts payable department here. I have not had one single problem. We have had problems with the copying machine--it did not work right--but we called the person and he sent in repair people. On a lease agreement, I can only say in my experience it has worked tremendously.

Mr. Turner: You leased it locally?

Mr. Bossy: Yes. Everything in my office is leased.

Mr. Chairman: While we are all getting our personal complaints off to the members' services subcommittee, here is one for you too. I want to know why the finance department cannot tell me what my monthly status is according to my budget. They tell me they are three months behind. They are still trying to process February and March. They cannot tell me how much money I have in my budget or whether we have anything left to spend. They do not know who is paid what wages. They have not sorted out last year yet. I think this is really getting ridiculous.

Mr. Turner: I do not know what has happened to them lately.

Mr. Chairman: I would like you to invite the finance department, or Larry Waters, or whomever, before you and get some explanation as to why our financial control here is such a sorry state that they are three months behind. It gets very frustrating, especially when people would like to get paid.

Mr. Mancini: Certainly, we will do that as soon as possible. I would like to ask Mr. Forsyth to make the arrangements to have Mr. Waters at our next subcommittee meeting, and I would like him to be informed in advance about some of the concerns that were expressed today. We will work on the members' concerns immediately.

I want to agree with my colleague Mr. Sterling. I think the idea of centralizing members' furniture and other things of that nature is just preposterous when a person can walk down the street and rent it locally from an area furniture dealer or office equipment dealer. The transaction could be done in five minutes and everybody is happy. I just do not understand how this has developed.

Mr. Turner: That option is still open, is it not, Mr. Chairman?

Mr. Bossy: To purchase and with depreciation.

Mr. Chairman: I am not aware; there is obviously some change.

Here is another one for you. I would like to find out how these changes take place, because the members are not told what these changes are. I am not

sure who is approving the changes either. I am not sure whether it is the Board of Internal Economy, the Speaker, or who is doing this. I am really getting a little upset that a whole financial system is in place and seems to be under no one's particular control.

Mr. Sterling: That is what worries me. In our last report, the recommendation seemed to be accepted by the Board of Internal Economy was recommendation 4 dealing with furniture in our apartments. If they did it efficiently, we probably would not care that much, but to have them intercede in the middle--whether I have a new TV set, an old TV set, or whatever it is--I do not want them involved to that degree because it is just a pain in the neck.

1540

Mr. Mancini: That is an option.

Mr. Chairman: You do not have any faith in the system.

Mr. Sterling: We have not adopted that. I sent back my response to it and said, "I do not want it."

Mr. Chairman: One other piece of business is the election of a vice-chairman.

Mr. Mancini: You guys know I was really good to you last year.

Mr. Turner: Yes, you were indeed.

Mr. Bossy: I nominate Mr. Mancini.

Mr. Chairman: Mr. Mancini has been nominated. Are there any further nominations?

Mr. Sterling: I am not going to nominate anybody, but it has been the practice of other committees to nominate someone from the same party the chairman is from.

Mr. Mancini: Except in this case.

Mr. Sterling: Yes, this committee has been different.

Mr. Chairman: We believe in multiculturalism.

Mr. Sterling: I am quite willing to live with that difference other than, I guess, after the next election, whatever happens. I think equality--

Mr. Mancini: Those concerns you raised about the constituency office, you can forget it.

Mr. Chairman: Any further nominations?

Mr. Sterling: I would like to second Mr. Mancini's nomination.

Mr. Chairman: Your accept Mr. Mancini.

Mr. Sterling: We will record that.

Mr. Turner: You changed that pretty quickly.

Mr. Chairman: There is one other matter which perhaps we could touch on a bit today. We have had referred to the committee Bill 23, the bill with the ridiculous name which has to do with conflict of interest. If we are to deal with this matter, it is a little awkward to try to deal with it when the House is in session because we have one afternoon a week. It is tough to process legislation in that format. If we were to order this at a time when the House is not in session, we may be looking at something like September before we get to it. Does that pose a problem for anyone?

Mr. Mancini: No.

Mr. Chairman: Is that agreeable then? Okay. We are trying to clear schedules around here so that we can get a vacation this summer.

Mr. Turner: Good.

Mr. Chairman: So we will try to keep the July and August period relatively free, with that one notable exception when we will work very hard, the last week in July. I would be suggesting to the House leaders that we would ask for committee time in September to deal with Bill 23.

Is there any other business?

Mr. Sterling: I have been a member of this committee for almost 10 years and we still have not got to visit--as my friend the member for Armourdale (Mr. McCaffrey), who was a former member of this legislative committee, would put it--the Mother of Parliaments.

Mr. Turner: You are kidding.

Mr. Sterling: I just wondered whether--

Mr. Warner: That is a grievous oversight.

Mr. Chairman: I do not know how you missed it. I have been there.

Mr. Bossy: I suggest that in the event there is an election some time, this could probably be proposed as the first event for the survivors.

Mr. Chairman: If we have a couple of minutes now, we did have a suggestion of responding to an invitation from the Northwest Territories. I will tell you that I am a little reluctant to pursue that at this time, principally because it involves a fair amount of organization in setting up meetings with members and there is a fair amount of work that has to go into putting that agenda together. I do not believe it will happen, but it is conceivable that some evil person could cause an election to happen, in which case, all of that work would be for naught. Unless I hear differently, I will just set that aside for a while until we are a little surer of our timetable. Are there any objections to that?

Mr. Warner: It sounds okay. What is the other option?

Mr. Chairman: Michigan.

Mr. Warner: Oh, yes.

Mr. Chairman: We could arrange a visit to the Michigan state legislature. That is not as difficult to put together but, again, I think we would be looking at September.

Mr. Warner: That is fine.

Mr. Chairman: Is there any further business? We are adjourned.

The committee adjourned at 3:45 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

TOWNSHIP OF CHAPLEAU ACT
MEMBERS' PRIVILEGES
ORGANIZATION

WEDNESDAY, JUNE 10, 1987

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JUN 23 1987

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:
Knight, D. S. (Halton-Burlington L) for Mr. Bossy
Smith, E. J. (London South L) for Mr. Morin

Clerk: Forsyth, S.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 10, 1987

The committee met at 3:27 p.m. in room 228.

TOWNSHIP OF CHAPLEAU ACT

Mr. Chairman: We have a request for a slight variation on the standing orders requirements dealing with Bill Prl9. A little bit of background on this: the Minister of Housing (Mr. Curling) is supportive of the bill. It is a local problem, essentially, of being a financial participant in the garage which is 1,000 feet outside of the township; so it is not a major item.

The problem is that when it was published in the Ontario Gazette, there was some confusion, so it does require us to provide them with a waiver of standing order requirement. You might look upon this as a technicality, but the problem was not created by the township which was applying for the bill. The problem was, I am told, created by the Ontario Gazette. So it would seem reasonable to me that, notwithstanding the provisions of the standing orders, we would recommend that the bill proceed.

Mr. Sterling: In addition to the notice regarding the Ontario Gazette, I do not know what the particulars of the circumstance are, but was notice placed in the local paper.

Mr. Chairman: Yes.

Mr. Sterling: The community knows what has happened.

Mr. Chairman: Yes. That is the only problem. Could I have a motion to that effect? From Mr. Sterling. Any further discussion?

Motion agreed to.

MEMBERS' PRIVILEGES

Mr. Chairman: The second item is the draft report on the telephone calls received by the member for Nickel Belt (Mr. Laughren). As per our discussions at the previous meeting, we have in fact drafted a brief report which succinctly outlines for members what options they would have if they were subjected to this, and it basically accedes to the request by the member for Nickel Belt not to take any further steps in this process.

Is that basically what members wanted? I will just give you a minute to look through it. It is basically one page which says, "If you get in trouble, call the Sergeant at Arms if you feel in need of assistance." Essentially, it reiterates Mr. Laughren's request that no further action be taken.

Mr. Turner: I think that was the consensus at the last meeting.

Mr. Chairman: Any other comments on the draft? Can I have a motion to adopt the report? Mr. Turner.

Those in favour of the motion to adopt the report. Any opposed? Carried.

Do you want this report tabled or moved for adoption? We normally move to adopt these reports even though we do not very often do that.

Under other business, I have had a request-

Mr. Sterling: Could I just ask a question about this? I was just thinking when I was reading the report, what do we give a witness? Is there any package we give witnesses when they appear or anything like that?

Mr. Chairman: We had talked about preparing a booklet, but I do not think it has ever been done. Perhaps it is something we could pick up and work on.

Clerk of the Committee: There is a booklet on committee procedure which is available. If it is a witness who has been specifically invited by the committee to appear on some controversial issue, there is probably a lot more advising done than in the case of a witness who is asked to appear in response to an advertisement. There is generally some advice given to him about presentation and things like that.

Mr. Sterling: I do not know whether it would have stopped this harassment. There was obviously a lot of electricity in the air in this particular hearing, and if we had had brochures at that time to point out what the rules are--

Mr. Chairman: These people were not witnesses, though.

Mr. Sterling: No, but they were probably in the audience--or they might have been in the audience.

Mr. Chairman: Do you want us to take a look at where that draft is?

Mr. Sterling: Yes, I would not mind that.

Mr. Warner: It might be useful anyway.

ORGANIZATION

Mr. Chairman: Under other business, I should report to you the good news. In its wisdom, the august and wonderful Board of Internal Economy approved the committee's budget. They were very friendly and very accommodating.

Ms. E. J. Smith: In spite of everything.

Mr. Turner: Do you want to explain that?

Ms. E. J. Smith: All the committees put in for so much time that they cannot possibly use it, but we approved it all anyhow.

Mr. Sterling: Are we going to talk about our trip to England?

Mr. Warner: That is included. They did not know it.

Mr. Chairman: I pointed out that we have not been to Westminster in some time and that members were beginning to feel angst about that.

Mr. Turner: Did it make an impression?

Mr. Chairman: Oh, yes. You could see their eyes were watering.

Ms. E. J. Smith: I pointed out in exchange that we have twice now cancelled the trip of whips and House leaders to Westminster.

Mr. Turner: You have not, so now is the appropriate time.

Mr. Chairman: Anyway, to other business.

I have one request from the government House leader. You may recall at our last meeting we were kind of ordering our schedule for the next little while. We have had referred to the committee Bill 23, the one with the weird name. It really is the conflict of interest bill.

Apparently, the government House leader wants to have the bill finished, if he can, before we adjourn for the summer. I just report to you that from our caucus's point of view, this bill is not going to take a long time to process. I think we have three amendments, but it is not a bill that is going to be lengthy in the committee stage.

The question is, if we deal with it in this committee between now and the next two weeks, basically, we would have to ask for additional time to sit, which we could do. The other option would be to simply report the bill back and do that in committee of the whole House. Which of those options do the members find preferable?

Mr. Sterling: Has John done any work on the background of this at all as to similar pieces of legislation in other jurisdictions or whatever?

Mr. Chairman: We have a fair amount of it. For example, on the background work that we normally might take quite a while to do, we have gathered from other jurisdictions a lot of that information. We could put that in a report to the committee in relatively short order.

For practical reasons, if you want to keep the bill here--and I would argue that this type of legislation is very awkward to do in committee of the whole House and is much easier to do in committee--it would be possible for us to prepare a committee report in the next few days that would give you background and similar legislation in other jurisdictions; in other words, the research for it.

From our point of view, we could process this bill in a relatively short time, but if there are a lot of amendments coming from other people and you are going to require a really lengthy period of time to do that, I have to get some extra committee time authorized. We would have to start doing that this week.

Mr. Sterling: I do not expect our amendments to be numerous. I expect there to be some major ones and some major debate, but my concern was whether we should think about pulling in anybody who has had some experience with this.

Mr. Chairman: I do not know where you would go to get it.

Mr. Sterling: That is why I was asking the question.

Mr. Chairman: There are commissioners in other provinces, and there are other provinces which have legislation of a similar nature. For example, we have had some discussions with members from British Columbia where they have a law in this regard. I have had conversations with people in Quebec and certainly with a number of American jurisdictions where it has been the law for some time, so we have a fair amount of background knowledge on it, and we have a fair number of reports and bills in other jurisdictions, things like that, that we could pull together for you.

I guess the basic question is do we want to leave it in this committee and try to process it here in the next couple of weeks or do you want to refer the bill back to the House and let the House do it?

Mr. Sterling: I would prefer to have the flexibility of the committee.

Mr. Chairman: In here.

Mr. Sterling: Yes. Actually, I would like to talk to one or two of these commissioners. If any of them have any kind of legislation that is similar to this--

Mr. Chairman: Yes, they are not that dissimilar.

Mr. Sterling: --I want to know how it works.

Mr. Chairman: Okay.

Mr. Sterling: I am concerned. If we are going to fix it, let us fix it.

Mr. Mancini: I guess I could agree with my colleague. I think we could do it here or in the House, and I think we should get started as soon as we can.

Mr. Chairman: Are there any other comments?

Mr. Warner: Like others, I am keen and eager to get this thing through by June 25, but there are a couple of little practical problems. At first glance, it always seems preferable to put it into the House because you have a greater opportunity to deal with it every day and you have a chance to put it through.

In terms of a lot of the detailed stuff, which Norm has raised--and I think quite properly it might be nice to hear from somebody from Quebec, the commissioner there or whatever the person's title is--it is actually more practical to work in here. We have the advantage of staff right here, and it is easier for us to work here and to devote our time to it. If we are going to do that, then we need the permission of the House leaders for additional sitting time and the commitment from whoever is carrying this bill that that person will be present. I think it is the Attorney General's bill, and right now in the House we are doing pay equity, which is his bill. He cannot be in two places at the same time. If we are going to do the bill, it would be silly to get approval for sitting time if we do not have the commitment from the Attorney General (Mr. Scott) that he or his parliamentary assistant can be here for the entire time.

I would prefer that we deal with it here, and I think we could get

through it more quickly, but in asking for extra time, I think we are going to look at, I would say, asking for three days next week and three days the following week. It would also mean that the three parties are going to have to agree that whatever is done here--we will finish it up on Wednesday, June 24--when it goes back to the House, then we cannot end up reopening it again. There are some little roadblocks.

Mr. Chairman: Let me just caution you a little bit here. I cannot entertain, and none of you is in a position to make, any agreements like that. You could have agreements among yourselves about not doing this, but I cannot be a party to something that says if we deal with it in committee this week, no one is allowed to say "committee of the whole" when it goes back. You can say that if you want, but it will not hold water. Nobody is in a position to make that agreement, nor are the House leaders.

Obviously you can make those agreements if you want to, but you cannot go to court and get a writ or an injunction that says, "foul ball." I would hope, if you chose to leave it in the committee and deal with it here, that you would not repeat the whole process the following day in the Legislature. But I cannot stop you if that is what you want to do.

Mr. Turner: There would not be any point really in going over it twice. If you are going to do that, you would be better to put it right into committee of the whole.

Mr. Warner: That is why I raised those points.

Mr. Turner: That is my concern, plus the time element. There is a certain amount of urgency there.

1540

Mr. Sterling: Notwithstanding the desire of people to get things done over a certain period of time, when you get into areas that are complex, new or innovative, there is a time span you have to go through whether you like it or not. Quite frankly, I think it is going to be tough to do it in two weeks. I really do.

Mr. Turner: Maybe we should give consideration, Mr Chairman, to sitting in the evenings, mornings or whenever else is required.

Mr. Sterling: We may have to do that. Because you want something done in two weeks, it is not always possible. Our committee on freedom of information probably could have done it in a shorter period of time, but we were constrained because the Attorney General is so busy with other things. I presume that is why he was busy. I do not know how busy he is over the next two weeks, but if key decisions have to be made on this legislation as we are going through it, then I presume he is the guy who has to make them.

Also, when legislation tends to reflect personally on members of the Legislature, they tend to take a higher plane of interest in some of that legislation, and more consultation is sometimes necessary. The very least we can do is plan that, by next Wednesday, we will have somebody here, if Mr. Eichmanis or Mr Forsyth can come forward with suggestions, to talk to somebody who has some practical experience with it.

Our caucus, with Mr. O' Connor, who will be carrying the bill for us, wants to go over various sections of it next week, so we are really not in a position to start meeting on it by Tuesday to discuss it section by section.

Ms. E. J. Smith: I do realize, as you say, that this committee cannot bind the caucuses, and that this whole proposal--

Mr. Chairman: We sure cannot bind the Legislative Assembly.

Ms. E. J. Smith: That is right, and when you come right down to it, the caucuses cannot bind the individuals. As Norm has said, this bill has a personal connotation that may make people feel more individual than combined. For those reasons, I am wondering if we would not be smart to send it back to committee of the whole, rather than risk doing it all twice, because I do not know that there is any way this committee can handle it, and therefore make it acceptable. It seems to me the committee of the whole might do it better.

Mr. Sterling: We could send it back to committee of the whole for clause-by-clause consideration, but if there is a desire by other members to have anybody appear in public, we could do that next Wednesday and then report the bill back, if that is our desire at that particular time. I do not think anything is going to happen on it before next Wednesday anyway.

Mr. Turner: Report it back without recommendation.

Mr. Warner: In other words, it does not necessarily just have to be next Wednesday. Suppose we were given extra sitting time. We could use that time, as we did with other bills, to run through and identify the areas where there will be amendments, the areas of agreement and the areas of disagreement, and any witnesses that we want. Then we can put it back into the House to go through clause by clause. At that point, we may have three or four amendments and, along with whatever the government may have by way of amendments, that is what we are dealing with. It may expedite matters. Joan is right--at that point, it may actually go faster.

The only risk--and it is a risk you run with any piece of legislation--is that when it goes into the House it is open to 125 members. It may surprise people that occasionally a member who has had absolutely no connection with the legislation wanders in, because it is his or her turn to sit in the House, and suddenly is interested and decides to participate. That happens. That is where it tends to get out of control.

Mr. Chairman: Could I make this suggestion? My concern here is that we have a problem either way. If we put it back in committee of the whole House, we lose any opportunity to use a staff report and the resources we have. It seems a shame that we have all this information and we are not going to be able to use it. If we send it back, we lose that and we lose the opportunity to talk to commissioners or other members who might be a little more familiar with this type of legislation. That is what we would give up if we sent it back to committee of the whole right away. I am a little reluctant to give that up.

Let me make this suggestion to you. Would it be reasonable to ask the House leaders to let us sit Tuesday, Wednesday and Thursday next week? Tuesday is an information day--a staff report. We will see if we could get a commissioner or someone to attend in front of the committee. It is short notice, so I do know whether we can do that, but we could make that effort.

We can take a couple of days next week to see how far we can get with it. There can be a loose agreement among ourselves that if we do not succeed in completing the bill by Thursday, we will report it back and let the rest of it go in committee of the whole House.

Mr. Turner: I have just one slight amendment for your consideration and the committee's consideration. Would you give thought to having Monday as a meeting day as well? No?

Mr. Chairman: The practical problem I am having is that I am aware of my own timetable and everybody else's.

Mr. Turner: All right.

Mr. Chairman: If I am in committee all next week, there is some legislation that is not going to get dealt with. I have a minister who has three or four bills and he wants to get to some of them before we adjourn. So we are all going to have timetable problems. That is the difficulty.

Mr. Sterling: Who is carrying it? Is the minister doing it or is the parliamentary assistant?

Mr. Chairman: I think it would be his parliamentary assistant.

Ms. E. J. Smith: It might be more flexible to have him carry it, if that is all right with the committee. It looks like the pay equity will be done today and his time is available to you. So I think we would keep our flexibility open if we used him rather than the minister, and you do want continuity.

Mr. Chairman: What is your pleasure on this?

Mr. Warner: I like the suggestion.

Mr. Turner: I would be prepared to meet here and deal with it as we can.

Mr. Sterling: What else is on next week by way of legislation?

Mr. Warner: Tuesday, Wednesday and Thursday.

Mr. Sterling: What other bills are on next week in the House?

Mr. Chairman: I cannot tell you. I do not think that has been set.

Is that an agreeable way to proceed? We will go to the House leaders and get as much committee time as we can next week. I will put it that way. The agreement among ourselves--I think we can make this kind of agreement--is, if we cannot finish it up by the end of next week, we will report the bill. Is that an agreeable way to proceed?

Mr. Turner: Sure.

Mr. Sterling: We cannot get to freedom of information because I think there are too many members of this committee--

Ms. E. J. Smith: Freedom of information was almost finished. I think it got caught up on a snag, so the government House leader--

Mr. Chairman: I have heard him called a lot of things, but I have not heard him called a snag.

Mr. Warner: Snag Sterling.

Mr. Chairman: I think I would have put a couple of adjectives in front of the word "snag."

Mr. Sterling: It is quite a good name, since I am going to be playing baseball against the press this afternoon.

Ms. E. J. Smith: Mr. Sterling, do you anticipate that it is going to take long to get out freedom of information?

Mr. Sterling: It depends if I can deal on a straight plane with your Attorney General.

Mr. Chairman: It depends on whether he gets his own way or not. It is as simple as that.

Ms. E. J. Smith: We could always get a substitute for you while you are away.

Mr. Chairman: Is that an agreeable way to proceed? I will ask the House leaders for as much sitting time next week as we can get. We will attempt to have the staff reports ready for you and in your hands as soon as possible, maybe by the end of the week or on Monday. We will attempt to see if there are any witnesses who might be available for our Tuesday information session.

Mr. Mancini: What time on Tuesday?

Mr. Chairman: After question period is the earliest it could happen.

Mr. Warner: When you said witnesses, did you have anyone specifically in mind?

Mr. Chairman: No. Other than the commissioners who might be available, there might actually be some people from nearby American jurisdictions whom we could get in here too.

Mr. Warner: I guess the person in Quebec and the one in British Columbia. Do you think it is preferable that they visit us rather than the other way around?

Ms. E. J. Smith: Yes, it is.

Mr. Chairman: What a sore loser you are.

Mr. Turner: She was much too quick with that answer.

Mr. Chairman: We will talk to the House leaders, and you can anticipate that you will be meeting regularly next week. If we can finish it, we will. If we do not, we will report the bill.

The committee adjourned at 3:50 p.m.

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

TUESDAY, JUNE 16, 1987

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
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Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:
O'Connor, T. P. (Oakville PC) for Mr. Villeneuve
Sheppard, H. N. (Northumberland PC) for Mr. Turner
Ward, C. C. (Wentworth North L) for Mr. Morin

Also taking part:
Foulds, J. F. (Port Arthur NDP)
Smith, E. J. (London South L)

Clerk: Forsyth, S.

Staff:
Schuh, C., Legislative Counsel
Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:
Ward, C. C., Parliamentary Assistant to the Attorney General (Wentworth North L)
Shipley, A. Q., Counsel, Policy Development Division

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday, June 16, 1987

The committee met at 3:23 p.m. in committee room 1.

MEMBERS' CONFLICT OF INTEREST ACT
(continued)

Consideration of Bill 23, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Mr. Chairman: I think we are ready to proceed. As promised last week, we have for each of you a little weekend reading: as many of the conflict-of-interest guidelines, codes, laws, statutes as we could find from many of the United States jurisdictions and all the Canadian jurisdictions.

We have included in the package statements by the Prime Minister--Mr. Mulroney I think his name is--and about three at the back, where there is a kind of general overview of how various folks have done this. So there is a fair amount of background information there for you. If you are looking for places where there are such guidelines in law, you have enough examples there to keep you happy.

I will report to the committee that we did try to get someone from Quebec to come before the committee. Quebec has had its law in place, I think, for two years.

Interjection: Since 1982.

Mr. Chairman: Since 1982? That does not appear to be possible until somewhat later in the year. In Alberta, they do have it in the form of a law but they have not really begun to use it yet, so it does not seem particularly useful to ask someone to come in from there.

Before we start, if you have amendments to the bill, I would ask you to try to get them to Smirle Forsyth as quickly as you can, just so that we can all kind of trade pieces of paper before we begin and see where amendments might fit in. I have already given him a copy of the amendments that are coming from our caucus. If there are amendments from anybody else, as soon as you have them ready, please hand them to Mr. Forsyth. He will make the copies and do the distribution.

Mr. Warner: Just for the information of the other members: We have three amendments, but they are being looked at carefully by legislative counsel, because the bill has been reintroduced and there are some changes and so the amendments may have to be adjusted, and also they should be drafted in both languages, English and French.

Mr. Chairman: Yes. I would say that is not a major problem at this time. When the bill is in its final form, it will go in both languages. I hope you will not--

Mr. Mancini: Could I ask my colleague what the nature of those

amendments are, if it would not be out of order? Just the general nature, nothing too specific.

Mr. Warner: Do you want it to be very specific? I have not got them in front of me.

Mr. Chairman: I can give them to you if you want me to.

Mr. Warner: All I can do is tell you that they will be here by tomorrow.

Mr. Chairman: There are three amendments, I believe, that we are putting in. One is to call for a provision that the commissioner may order divesting, so that he would have the discretion to do that. The other two amendments have to do with registering lobbyists and providing for regulations for lobbyists. Those would be the three amendments that we have contemplated putting in now.

I am anticipating, frankly, that there may be a series of amendments on the nuts and bolts of it, but if you could at least give us some clue as to substantive amendments--I am not worried about wording amendments--but if we know where the arguments are going to be, that would assist us in deciding how we pace things a bit.

Mr. Warner: Learned counsel is attempting to have these available by tomorrow. Of course, the moment I receive them, you shall also.

Mr. Chairman: Are there any other comments before we start?

Mr. O'Connor: By way of a point of order, Mr. Chairman, I would like to raise the question of our scheduling--with some concern, I might say, on behalf of our caucus.

I note from somewhere that we are scheduled to sit five times in the next three days. I can tell you that in the course of our caucus meeting this morning, the subject of this bill was raised. It occupied perhaps a third to a half of the entire caucus, with perhaps 20 members of our caucus interested in the provisions of the bill, interested in having explanations of some of the sections and interested also in ultimately being involved in discussing the bill, either here--they will come from time to time when their schedules permit--or in committee of the whole House, when we get back into the House in regard to this bill.

I just wonder, after the length of time that this matter has been before this Legislature, not formally by way of a bill--I realize it was introduced only in May of this year--but by way of the continuing hearings in the Caplan matter and in the Fontaine matter which this committee heard last summer, virtually a topic of conversation and interest to the public since July 1985, why, suddenly, we are confronted with attempting to cram some five hearings into three days.

In my experience before this House, which is of course limited, you will understand, that is unprecedented, when we have at least two weeks before we rise. We have some sittings scheduled for the summer, including into September, and we have when the House comes back in the fall. Is it totally necessary? How was the decision arrived at? Why the heck are we here doing five hearings crammed into three days in what seems to be an unseemly haste to get this thing done?

Mr. Chairman: Unseemly haste again. I can only tell you what the committee decided at last week's meeting. The committee agreed that it would take three meeting days this week, after question period: Tuesday, Wednesday and Thursday. We would take today's session as basically an information session. We would begin to try to go through clause-by-clause on Wednesday and Thursday. At the end of Thursday's session, we would make a decision whether to report the bill. I think it was generally agreed that if we had not dealt with it by the end of Thursday afternoon, we would report the bill, but that we would take a first go at it.

1530

When the motion was put, I noted there were a couple of additional times put on. That was not the agreement struck here, and this committee will order its own business. I would not be calling for meetings Wednesday morning or Thursday morning unless the committee directs me otherwise. I am aware people do have other commitments and other things they have to do. We have agreed to take three sittings this week, to have an information session on it this afternoon and to take a couple of afternoons and just test the waters to see whether this bill can be done quickly or whether it is going to require more time.

I point out that our original decision was to set this bill over until September and to order it for probably two to three weeks of work. It is a little easier to do that when the House is not in session because, for one thing, you get the full legislative day. But if there was some urgency expressed by the government House leader that he was going to have a fit or some terrible thing like that if he did not get this legislation--at any rate, the government indicated it wanted the bill.

The committee agreed it would try it for three days and then make the decision whether we would continue with the bill or report it back to the House where it would go into committee and clause-by-clause would be attempted there. That is roughly where we are at.

Mr. O'Connor: That is of some comfort. I understand what you are saying is that we are now sitting just three sessions over the next few days rather than five. Is that correct?

Mr. Chairman: Yes.

Mr. O'Connor: That is of some help. To get back again to what you mentioned was the committee's original intention, which was to sit some time in September, I take it at that point that would have been for public hearings or input from sources other than our own resources prior to clause-by-clause analysis.

I really would emphasize that I think that is a necessary part of this process. I know we have asked people from other jurisdictions to attend and they were unable to do so today and the next couple of days, but if we were to schedule some of those hearings for September, I am sure, given that lead time, we could acquire the necessary input that we want.

I have done a survey of jurisdictions across Canada with respect to this type of legislation, and I note there are four, out of the 11 other jurisdictions, which require full disclosure by private members. So there are at least four jurisdictions which could tell us about their efforts in that regard, how it is working, and whether it is working, whom we could cross-examine as to flaws, perhaps.

Our caucus has some considerable reservations about sections 11 and 12 of the bill. I personally and we personally would like to hear from other jurisdictions which have tried it and see how it is working. In all four of the cases to which I have referred, two western provinces and two others, they are relatively new in that field, and I think it is a significant step. It is not something we should plunge into and it does warrant public hearings.

Similarly, there are eight other provinces which have legislation similar to this which affects senior civil servants and other support staff of ministers and the Premier. Again, there is a wealth of experience that could be drawn upon to give us advice in that regard. I will tell you again, one of the things our caucus would like to see would be the broadening of this bill to include senior public servants and support staff of ministers and the Premier.

I ask my question, I suppose, as to why we are attempting, as you say, to report the bill back within three short days when we do have the opportunity and when there does not seem to me to be the all-fired haste--at least there has not been with regard to the government's position on this issue. We are in the position where the member for Cochrane North (Mr. Fontaine), who is perhaps one of the perpetrators of this whole effort and the reason the bill is before us and before this committee, still has not seen fit to file what he is required to file under the old guidelines.

Mr. Chairman: I am just going to interrupt you here for a moment.

Mr. O'Connor: I am not finished.

Mr. Chairman: You may be finished. This committee orders its own business. This committee did that last week. If somebody wants to put a motion in front of the committee, I will be happy to entertain that, but the committee has decided what it is going to do and it is now going to set out to do that. I do not see any point in arguing this any further, unless you want to put a motion in front of the committee and change that direction.

If you want to exercise that option, which is always open to you, go ahead and do that, but I do not see any sense in arguing whether we are going to do today what we said last week we were going to do. We are going to do that.

Mr. O'Connor: What I might do then is reserve my right, which I think I have the right to do in any event, at some later point in today's proceedings or tomorrow, to put that kind of a motion to reorder the committee's business for that purpose.

Mr. Chairman: That is in order.

Mr. Ward: I would like to make a few comments on Mr. O'Connor's point. I did not have the pleasure of serving on this committee when it was considering the matters relating to Mr. Fontaine, but I would say that, during the course of last summer, I believe the standing committee on public accounts sat for some 10 to 12 weeks and, among its terms of reference, in fact, was a review of the conflict-of-interest guidelines and need for legislation, etc. So I just make the point that there has been no shortage of committee time in this Legislature considering these issues. There has been no shortage of input. John Black Aird delivered his report during the course of last summer.

My recollection was that, when we recessed at the conclusion of the last

session, there was some criticism coming, in fact, from members of the official opposition that we did not have in place conflict-of-interest legislation, and the government has attached a high priority to having this legislation in place by the conclusion of this term. It is my understanding that the bill could have gone either to committee of the whole House for all members to debate as long as they want--at the urging of the chairman of this committee, I think rightfully so, because this committee has had some expertise and considerable consideration of the issues that are before us.

Mr. Warner: And high calibre members.

Mr. Ward: And high calibre members. It was suggested that the bill should come here for your invaluable input, but there is a high priority on this legislation. We hope very much to have it in place before the session recesses.

Mr. O'Connor: We also place a very high priority on it, as my friend the parliamentary assistant said. For some time we have urged the government to bring this bill forward. That does not mean that when it comes forward we suddenly should deal with the whole darned thing in three days, and that is the point we are trying to make.

You make the point that we spent a good deal of last summer in two committees dealing with this subject. Sure we did, but they were trials. They were dealing with specific issues of specific members who had violated the guidelines. It had nothing to do with resolving the problem. They were fact-finding sessions which determined the guilt or innocence of two particular members of this House who were found guilty and kicked out of their jobs.

Mr. Ward: That is not how the public accounts committee ordered its business. I do not know how this committee--

Ms. E. J. Smith: I would just like to point out that, as the chairman knows and shared at that time and as has been pointed out by Mr. Ward, the House leader had the option of sending this directly to committee of the whole House. He had already made it clear this would be dealt with in this session. This committee then volunteered to assist, to do some prework if it could be useful, and that is what has happened.

It will not go back after three days. It will go back to committee of the whole, assuming we have not got complete agreement here. If it went back with complete agreement, it could, I assume, go back not to committee of the whole. But since it is going back, undoubtedly, to committee of the whole, the members of the official opposition will have the opportunity then. It will follow the usual procedures of being dealt with in committee of the whole, and if they want to speak for a month, I suppose that is what we will all be doing.

Mr. O'Connor: What is lacking in that process--

Mr. Chairman: Hold on a minute. Mr. Warner.

Mr. Warner: Just briefly, I would like to make our position quite clear, so that the committee understands where we were coming from. There should not be any great cloud of mystery hanging over this legislation, not just because of the hearings which went on last summer or because of Mr. Aird's report. Over the past two years, this committee in its various opportunities in the individual states and in Canada had an opportunity to

discuss conflict of interest with a number of politicians in a number of locations. We have had the assistance of a very able researcher. We have had a good opportunity to take a look at the legislation. For our part, we have offered three particular amendments.

The process is not quite as complicated or as complex as our Conservative friend would suggest. In fact, I would think we should be able to go through this legislation with relative ease and perhaps make a couple of adjustments here or there, but it is not such a big deal as my friend is attempting to portray.

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One, in fact, might question whether the Conservative caucus has indeed an interest in having this legislation passed before the House rises, assuming that, as we understood earlier, the Conservatives as well the New Democrats and Liberals wish to end the session on or about June 25. If that is the case, then at least for our part, we would like to see this legislation passed before June 25. If the Conservatives do not feel this is what they would like to do, then perhaps they would be so bold as to actually tell us that, and then we would know how to proceed from here.

Quite frankly, we are fully prepared to go ahead and discuss the legislation, to suggest a few alterations, to work hard at this over the next few days and, hopefully, come up with a piece of legislation that all of us can be proud of and get through the House before June 25.

Mr. Treleaven: To answer David first: He asked the Progressive Conservatives to be candid and say what their real bottom-line concerns are. The bottom-line concern is that the thing progress properly. Right now, it is totally unacceptable, in spirit, in letter, in philosophy, in various areas. We have real concerns in our caucus. Some are adamantly opposed to various sections of it and they will not want this passed without hearing from witnesses, both within the province and from without the province.

Looking at the report that our committee put in when we went over the Aird report, the first page says, "Moreover, the committee assumes that after the government has introduced its bill, that bill will be referred to the committee after second reading when the committee will have an opportunity to make more detailed recommendations." And it says, up above there, that is only "setting the parameters." It says that our report is very tentative. So at this point we, the PC caucus, are adamant that this is going to proceed in a proper fashion, in a full fashion, and is not going to be jerry-built and expeditiously rammed through.

Mr. Warner: Another one of your railroads. The last one was two years long.

Mr. Chairman: Let me just intervene for a second here. I would not want to take, from what has just been said, any inference that there is any railroad in operation here. The committee agreed last week, unanimously--so there were Progressive Conservative members here who agreed to this--that we would sit three times this week. One session would be a basic information session, and at the other two sessions we would begin the clause-by-clause process. If we get it finished, fine; if we do not, also fine. So there is no railroad in operation here.

If there is a demand that I am hearing now for some great public hearing

process, members should simply put forward motions calling for public hearings. We will entertain them, and if they carry, they carry, and if they do not, they do not. But I am simply taking direction from the committee at its last meeting on how to proceed and trying to do that. If people want to do other things, write down on a piece of paper what you would like to do, put it in the form of a motion and put it in front of the committee. It is as simple as that.

Mr. Treleaven: Like the Senate, we are having sober second considerations.

Mr. Chairman: I am not touching it.

Interjection.

Mr. Chairman: See, I told you. Do not touch it.

Mr. O'Connor: Lest the record indicate that my silence was acquiescence to Mr. Warner's comments, I wish to take extreme exception to his characterization of this bill as no big deal, that we have done all the thinking about it and should just put it through quickly. This is a significant legislative step in Ontario. It has not been done ever before in our history. It has only been done recently in other provinces. I just do not see the need for undue haste. As my friend says, if we are having second thoughts about public input, public process, it would be of significant help to us to have somebody representing the authors of the Aird report and the Blake, Cassels and Graydon report before us for a process of cross-examination.

Mr. Warner: Did you vote for this at second reading?

Mr. Chairman: No, they did not.

Mr. O'Connor: I do not agree with him at all that it is something, a fait accompli, that we should slip through. It is a significant piece of legislation that requires the time and the concern of this House. If he is not concerned, then perhaps he should go sit on another committee, because we are.

Mr. Chairman: I am a little disturbed about the tone of the conversation here. I am going to remind you that you are here to process a bill.

Mr. Warner: Then let us get on with it.

Mr. Chairman: It is something we do every day of our lives. You are not here to conduct some kind of royal commission on conflict-of-interest guidelines. You are here to process a bill. It is that specific. It has been printed. If you have amendments, you know how to exercise that process. If you want public hearings, you know how to do that. I am simply doing what the committee ordered me to do last week. We have given you the background information. There is a wealth of other information that you already have.

One of the reasons it was sent to this committee is that this is the committee that did do a response to the Aird report. It has had some experience in looking at the other side of conflict of interest, when there appears to be a problem with a particular minister. The committee has from time to time expressed an interest in this very concept and we have looked at it in other jurisdictions. So it seemed reasonable and logical to me that this would be the committee that would receive the bill.

But at this stage, we are not here to do a royal commission on it; we are here to process a bill, like any other bill that we get and as important as any other piece of legislation that we get. It is true that this is the first time that Ontario will have such legislation and it is true that several other Canadian jurisdictions have done not quite the same but similar kinds of legislation, and we should be able to learn a little bit from their experience.

Mr. Warner: That is true of the accord.

Mr. Treleaven: A couple of points: David was asking--I do not know whether it is on or off the record; it does not matter--whether we supported that. The PCs, the official opposition, did support this bill and the principle.

Mr. Warner: Now you have changed your mind.

Mr. Treleaven: No, we are totally in favour of a conflict-of-interest bill.

Mr. Warner: You just do not want to pass this one.

Mr. Treleaven: A good conflict-of-interest bill.

Mr. Warner: You voted for it but you do not want to pass it.

Mr. Treleaven: This is a flawed crock. Is that candid enough? It is flawed. In principle, we are in favour of a conflict-of-interest bill, but not this one.

Mr. Warner: Not this one, even though you voted for it. Make sure you get that clear.

Mr. O'Connor: May I just add that my friend from the New Democratic Party equally does not want to pass this bill by virtue of the fact that he has introduced three amendments. We are introducing amendments too. What we are saying is we do not like the bill in its present form--

Mr. Warner: We have a job to do--

Mr. Chairman: Could I have a little order in here? I do not very often do this in this committee. If this is what you want to do for the afternoon, I am going to adjourn. I have no time for this. If you want information, we have people here who can give that to you. If you want to ask questions, we can do that. If you want to have this kind of harangue, find yourself a hall somewhere else. I have no interest in listening to it. If you have questions of staff or John Eichmanis or anyone else, fine. If this is what you want to do for the afternoon, you will do it without me.

Mr. Warner: I have a couple of questions. I have a question for John. Maybe he should go up where the microphone is.

Mr. O'Connor: I am sorry to interrupt, but we were discussing points of order which I think are legitimate and in order, and if our voices rise and it upsets the chairman, I do apologize for that. But I think what we were discussing were points of order which are in order and legitimate and must be listened to by the chair. The chair may not want to proceed but I suggest you have no choice.

Mr. Chairman: Excuse me. You did not offer a point of order. You did not offer a motion. A member of the committee has asked for a chance to ask some questions. We will do that. If you have a motion that you want to place, get it ready and I will hear that.

Mr. Warner: I wondered if John had done any kind of comparison between the bill and Mr. Aird's report.

Mr. Eichmanis: We did in fact do that, yes.

Mr. Warner: Are there significant areas of difference between the two?

Mr. Eichmanis: I would have to go back to the report, which I can get in a matter of a few minutes for you. I just do not recall offhand. I do not think there were, but I do not want to be positive about that.

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Mr. Warner: Were there any particular areas you would draw attention to that we should pay special heed to when we go through the bill?

Mr. Eichmanis: I think the definition of "private interest" and some of those things have to be looked at, for example, under section 2, the whole section turns on the word "knows." I assume that if the member does not know he is in a conflict of interest, then he is not in a conflict of interest. That needs to be clarified or explained, elaborated on. There are things like that.

Mr. Warner: When we start tomorrow, when we go through it clause-by-clause, I take it Chris is going to be here for that. You are carrying the bill, right?

Mr. Ward: Either I will or--

Mr. Warner: Will there be legislative counsel with you?

Mr. Ward: Yes.

Mr. Warner: For example, John raised the question about "knows." I think that is a legitimate question I would appreciate getting some kind of legal response to, as to how the Attorney General's department would interpret that phrase.

Mr. Chairman: We have staff from the AG's department here now.

Mr. Ward: Allan Shipley and Karen Cohl are from the AG's office.

Mr. Chairman: If you have questions, we could simply ask them to come to the end of the table.

Mr. Warner: Certainly. I left my copy of the bill somewhere. Do you have an extra copy?

If we could go to section 2--and then I have a question regarding section 3--in section 2, as John mentioned, where it says, "and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest," does that mean that if the member can

claim he or she did not know, then he cannot be seen to be in a conflict of interest?

Mr. Shipley: I am Allan Shipley from the Attorney General's policy development branch. I think I would answer that by saying that if the member does not know there is an opportunity to further his or her private interest, then the member is not caught by this bill.

Mr. Mancini: Could I just add something, please? My understanding of the bill is that while that is correct, if a member of the assembly believes that the other member was in conflict or if the commissioner believes that particular member was in conflict, there is a procedure that you go through and that is where you can claim that you did not know. Then it would be up to the commissioner and/or others to accept your argument as to whether you did or did not know.

You have to relate section 2, the first part of the bill, to the last part of the bill, where there is a procedure for once a person has been--I hate to use the word "charged"--once a person is alleged to have been in conflict. That is when that is cleared up, according to my reading of the bill.

Mr. Shipley: Can I help? It is quite true that does not preclude another member from making an allegation and having it dealt with under this bill. For example, even if the commissioner then determined that there was no knowledge on the part of the member, that does not preclude a more public kind of inquiry nor does it preclude anyone from making an allegation that the person was in conflict.

Mr. Warner: In section 3, the information is not available to the general public. Is there some kind of test to determine whether something is "available to the general public"? How do you determine that?

Mr. Shipley: I suppose one of the tests we may have shortly is whether it is available under the Freedom of Information and Protection of Privacy Act, Bill 34. If it were this kind of information, then anyone could use it. I think we have some idea of the kind of information that is not available to the general public, the kinds of discussions that would go on in cabinet, for example.

Mr. Warner: Just to use one example: Information is provided to a shareholder which is generally not provided to nonshareholders. Is this classified as being available to the general public because it is made available only to shareholders and not to someone else?

Mr. Shipley: What we are trying to deal with in section 3 is using information which is gained in the execution of your office. The information you are getting as a shareholder is not information you are getting as a member. So this is not covered. It would not be intended to be covered; that is intended to deal with the information that you gain as a result of being a member and is not available to anyone else.

Mr. Warner: Okay. I will use a different kind of example. If you apply the test of the freedom of information, I am a member of the cabinet and as such certain cabinet documents are excluded from freedom of information.

Mr. Shipley: Yes.

Mr. Warner: If I use the information from these documents to further

my own private interest, then that is clearly an example of using something that is not available to the general public, and I run a risk of--

Mr. Shipley: Yes.

Mr. Mancini: May I make a comment on that? Under this legislation, that would be virtually impossible because your assets as a member of the executive council would have to be turned over to a trustee or a trust fund at arm's length. It is stipulated that the trust is to be operated by the trust, the trustee or whoever, without going back and forth to the member of the executive council.

It is not just a question of having the information. It is a question of, one, seeing the information; two, having it at your disposal; then, three, directly contravening the legislation by immediately getting in touch with a person who can funnel the information to the person handling the trust or getting directly to the person who is handling the trust.

Mr. Warner: But it could be to one of my friends. If I use information from cabinet documents, which are protected from the freedom of information, and am able to supply my friends with information which allows them to make a huge profit on a land transaction--

Mr. Mancini: Buy some Suncor Inc.

Mr. Warner: --sale of public lands, mining stock or whatever because of exploration, then in fact I may not gain directly but surely I am in conflict of interest. Am I reading this properly?

Mr. Shipley: Then the next point to look at in section 3 would be what it is included in a member's private interest. The prohibition is using information gained in your office, not available to the public, to further your own private interest. Private interest is not defined, except by exclusion. It says in the definitions, private interest does not include certain things. When some of the committees looked at conflicts, the Caplan committee felt that private interest meant more than a financial or direct pecuniary interest, but it did not go beyond that.

This is the next issue, whether or not providing this information to his friend, relative or neighbour furthers his private interest.

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Mr. Chairman: Could I ask you a question I have been asked about which I do not have a good answer for? I am sure you have thought about it. In much of the bill, there are requirements on people other than members to disclose publicly, privately, not to enter into agreements; in other words, the conflict provisions of this bill extend to members and to other people, spouses, children, people like that.

What is the legal status? For example, if I were the spouse of a member and somebody passed this law which said I had to disclose certain things and I did not want to, I think I would be off to court challenging your right to pass legislation which requires the spouse of a member to make a disclosure, to declare conflicts, to do a whole range of things.

I notice in here we talk about minor children. I think we have a legal definition for that. But there would be other family members, for example, who, to all intents and purposes, could be put out of their business.

Mr. Mancini: Or a person you are living with.

Mr. Chairman: Yes, people restrained from making a livelihood by means of this act and they are not members of the Legislative Assembly, but people who are related to members. What is the legal status of all that?

If somebody wanted to challenge the right of this Legislature to pass a law which requires somebody to disclose, divest or not do business with, would they not have some grounds for going to court claiming that the Legislature of Ontario may well put rules on its own members, but cannot put rules on people who are related to them or happen to be in some kind of a relationship with them? What is the legal status of all that? It is in the bill a lot, so I am sure you must have dealt with it.

Mr. Shipley: The obligation is really only on the member. It is that every member shall disclose.

Mr. Chairman: Excuse me, that is not true. The spouses are required to meet with the commissioner and in some limited way to make disclosures, and they certainly would be prohibited from carrying on business with the government of Ontario. If I were one of those spouses or in a relationship with a member or a family member--I am sure we must have thought this through, but I would be most upset that I had to disclose things, even though I was not a member of the assembly, or that I was not allowed to do business, even though I am not a member. What is the legal status of that? Can we put such requirements on these people, as simply as this act purports to?

Mr. Shipley: Again, if we look at section 11, the duty to disclose is on the member. The member has to disclose interests of his spouse or his children.

Mr. Chairman: Excuse me, but in that same section, the disclosure statement contains the information on people other than members.

Mr. Shipley: Yes.

Mr. Chairman: Maybe that is your legal position, that it is the member who is doing the disclosing. If I am the wife of the member, and there is a requirement here to put a public disclosure on the record, I would say: "I am not signing any waiver which allows my wife or husband to put on public record a whole lot of things that I do not want to be public business. I am not a member of the assembly. You cannot put that obligation on me." It seems to me they would have pretty strong legal grounds for making such an argument. What is the counter-argument?

Mr. Shipley: I do not think there is anything in the bill that imposes an obligation. There are certainly no sanctions on the spouse or the minor children for not complying. Any sanctions would come back against the member.

Mr. Chairman: This is getting a little more disturbing though. Somebody had better explain this to me.

Mr. Ward: I think Allan has explained it as succinctly as it can be explained. Clearly the obligation is on the member, even under the previous and existing guidelines. The obligation is on the member, the sanctions are on the member to disclose the interests of his spouse and his minor children.

One of the other things the bill does--there is some confusion over

this, and I thought either you or Mr. Mancini alluded to it earlier--there are differences in terms of the obligations of members of the assembly and the obligations of members of the executive council. When you read the bill, particularly as it relates to members of the executive council, obligations may apply to members of the executive council, but not necessarily on others in those sections.

It is clear that the entire obligation here is on the member to disclose, and that is why the penalties are applied.

Mr. Chairman: Okay, but I am going to pursue this a little bit more. You can say that the sanctions are on the member, but that is not the sanction I am talking about. The sanction would be on the spouse who has--we have just done the Freedom of Information and Protection of Privacy Act. In that bill there is an attempt to protect people's privacy as well as provide information that the public ought to have. The sanction I am talking about has nothing to do with penalties in the bill. The sanction is that a spouse of a member may have to put forward a public disclosure, or her husband or his wife who is in some hot water, under this act.

Interjection: No, the member has to.

Mr. Chairman: No. Excuse me. The fact that I disclose in my statement what assets my wife might have puts a penalty on her. She may not want that information disclosed. She may be precluded from doing business with the government of Ontario. I am not making reference to any penalties within the act. I am saying she is paying a penalty because she has to disclose some information. Are there legal grounds that say we can do that? For example, would the Charter of Rights or the Freedom of Information and Protection of Privacy Act apply in this instance? Have we thought about that?

Mr. O'Connor: Just before you answer that, may I ask a supplementary to be included in the same question? The argument you seem to get into is exactly the concern our caucus developed with regard to sections 11 and 12. It goes further than that, I might say. In answering that question, perhaps you can do that.

You will notice that it makes reference not only to the wives and children of members but also to any interest in private companies they might have or control. Of course, private companies may be controlled by them, but they could also include other partners or other shareholders who are minority shareholders in that case but who may be unrelated to them in any way, shape or form.

They may be other members of the public who are not wives and children but who are shareholders of the private corporations controlled by the member. In that case, the affairs, business relationships and business assets and liabilities of people who are not even wives and children of members are being asked to be laid before the Legislature and made public in a report.

Those kinds of things concern us considerably. I am just wondering whether the authors of the bill intended it to go that far and whether they think they have the right to have the bill go that far.

Mr. Chairman: Before you start your answer, I will tell you the reason I am putting these questions. For example, I have had a number of women's groups note in conversation that there is an obligation on the spouse here which they believe to be unfair. They are probably the kind of people who will, at some time, disclose.

To state the obvious, the allegations we all sat through last summer centred around that kind of controversy, that somehow a relative, in one case, the husband of a member, did business with the government or did certain things which some people thought were improper. I think we have to have a better answer than saying, "It is just on the member," because there are ramifications here for people other than members of the assembly.

Mr. Treleaven: May I take a supplementary on that? May I distinguish between sanctions and obligations? I think we used the word "obligations" a little loosely there.

If you take subsection 11(4), it talks about "the member, and the member's spouse if the spouse is available," but then in the last line it says, "to obtain advice on their obligations under this act." So there is an obligation on the member and spouse and, presumably, the obligations would similarly be on children.

The sanctions may be on the member, but there are obligations. A spouse can therefore be in breach of her obligations under the act. So let us not just Lucy-Goosey throw it out and say there is no obligation on the spouse.

Mr. Ward: I do not think it was said that there were no obligations on the spouse.

Mr. Treleaven: Hansard will show that those were your words.

Mr. Ward: What we were trying to clarify is that the sanction is against the member. Ultimately, the obligation falls to the member, because it is merely as a function of that person's being a member that minor children and spouse have to disclose.

Mr. Treleaven: Then why would they refer to their obligations? It does not mean the member. It is in the singular. After filing a disclosure statement, "the member, and the member's spouse if the spouse is available, shall meet...on their obligations...."

Mr. Ward: I have some difficulty in understanding where the argument is leading. Are we arguing that minor children and spouses should not be included in the coverage?

Mr. Treleaven: Because they will say the spouse has broken the act, that the spouse is in breach of the act.

Mr. Chairman: I do not want to argue this point but I do want to get back to the legal opinion upon which it is based, because this is a question that is not going to go away. Clearly, there are obligations put on people other than members to participate in this process in some way. They may not like it, and I want to know that we are on reasonably safe legal grounds to proceed in this way. I am sure you must have dealt with this, because it is an obvious one.

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Mr. Shipley: Right. I guess the shorter answer is that we are satisfied we are on safe legal grounds. Yes.

Mr. Chairman: You think no one is going to challenge, even though this--

Mr. Shipley: We cannot. People will always challenge, but it is whether--

Mr. Chairman: To be very blunt about it, if I am the husband on the outside running a business, I may have lots of reasons why I do not want to enter into disclosures of this nature, especially if I am not the member. I do not think this is a theoretical problem here.

Mr. Shipley: Again, still looking at it from a legal point of view, there are no legal penalties. There may be ramifications, there may be spillovers, but there are no legal ramifications and no legal sanctions, nothing the commissioner can do or a court can do if the spouse does not comply.

Mr. Chairman: That is true, but that is not to say there are not ramifications.

Mr. Shipley: No.

Mr. Chairman: The penalties under this bill would be peanuts, I suppose, compared to the ramifications somebody might face at having to put out disclosures of this kind. I am not going to have this problem, I will tell you that much now, but if I were in a different business, if I had assets of any sizeable nature, I am sure I would be looking at it, and I think I hear, coming out of one caucus in particular, a lot of folks who are nervous about this aspect of it.

It appears to me they will be challenging it all the way through as we process the legislation. It also appears pretty obvious to me that some people are going to challenge this in a court after we have passed this law. It is generally not a good approach to be passing laws that are not going to stand up.

Mr. Sterling: On the same line, I think--

Mr. Chairman: Let me just get Joan in first.

Ms. E. J. Smith: I think part of what this is based on, though, as it is in our family law, is that we now own everything jointly. In effect, you have to look at the joint combination as a nest egg that belongs to both. Otherwise, people could put everything in the wife's name and disclose nothing or the husband's name and disclose nothing, knowing well that they are protected by the Family Law Act. They are going to get half anyway if they are divorced. I think this recognizes that new reality in our life that really, under our present marriage laws as seen by the court, what you own you own communally.

Mr. O'Connor: No, absolutely incorrect. The Family Law Act has absolutely nothing to do with married couples living together happily and their respective interests and assets. It only comes into effect if--

Ms. E. J. Smith: If I sit here--

Mr. O'Connor: No, it comes into effect only upon separation.

Ms. E. J. Smith: --as a matter of interest, and double my husband's income, I can count on the fact that when he dies or leaves me, I am going to get half of it.

Mr. O'Connor: Yes, that is the key: when he dies or leaves you. But if you are living together happily in a conjugal relationship, as I presume you are now, and most of us here are, excepting me, then it does not matter. It does not have any effect at all.

Mr. Treleaven: Doubling your family income. Holy cow.

Mr. O'Connor: I do not think the point I raised has been met here. There are other people than spouses whom Ms. Smith does not mention, that is, minority shareholders in private corporations and their families who have an interest in that corporation, perhaps up to 49 per cent of the interest in that corporation, who are suddenly going to have all their worldly assets and liabilities revealed publicly at the table of this Legislature. How is that fair? Is that what we want?

Ms. E. J. Smith: I believe, and I could be correct or not, but let us assume my--

Interjection: We're not talking about a sex life.

Mr. O'Connor: They may have nothing to do with politics and may hate politics.

Interjection: It does not matter.

Ms. E. J. Smith: May I assume that a spouse has, say, 40 per cent of a private company? That is precisely what he would have to declare, "I own 40 per cent of the stock of company X." I do not think he would have to say, "which is worth such and such," because private companies do not have to disclose what their stock is worth. He would have to declare his ownership of that stock. He would not have to declare the other stockholders, and I do not think he would have to put a value on the stock.

Mr. O'Connor: Yes, he has to put a value on it.

Ms. E. J. Smith: I am not sure about that. He would not have to declare the other owners anyway, so there would be no intrusion on their privacy.

Mr. Chairman: Could I make a request that we get a little better legal opinion in front of the committee? I have been asked this question and I did not have a good answer, and I still do not. I would dearly love to have a little better response to people who are asking me about this than what I have so far.

It is comforting to know we are on safe legal grounds. It would be even more comforting to know why we are on safe legal grounds. I am sure the ministry, in preparing the bill, responded to the same questions. If they have been asked of me, it sounds logical that the minister had to deal with them.

Mr. Sheppard: That is also a reason why we should have hearings over the summer, because the government is trying to push this through.

Mr. Ward: The ministry has available its own legal counsel to provide advice on the drafting of this legislation. I think Mr. Shipley has responded that in the preparation of this legislation, they were satisfied they were on strong legal ground and, therefore, the bill was drafted accordingly. I do not know what more you want. You cannot have a guarantee.

Mr. O'Connor: Perhaps I can put on the record that we feel you are not on strong legal ground. There. We have two opinions now. I think he has to go further. My point is he has to go further and tell us the analysis they went through and the basis upon which they came to that conclusion. Just to simply state it as if it were coming from God--

Mr. Ward: This whole argument, though, that every piece of legislation has to be free from a challenge: No piece of legislation is free from a challenge. The point is whether it can withstand that challenge and the government is of the opinion that it can withstand that challenge.

Mr. Chairman: Am I getting the message that the Ministry of the Attorney General is not prepared to provide us with any further information of a legal nature?

Mr. Ward: We would be happy to provide you with further information if that is what the committee seeks.

Mr. Chairman: It would certainly make the chair a little happier.

Mr. Warner: I have two questions, one going back to the issue that was raised which obviously centres on section 11 in particular and section 12. I agree with the chairman in the sense that there should be a little more detail. Some people will object and say it is an invasion of their privacy since they are not elected persons; especially with the relationship to our charter, I would think they have fairly solid grounds on which to argue.

On the other hand, I am not exactly clear as to the cause of the commotion. Obviously, if folks have things to hide, then naturally they do not want people to know anything about their private business. But am I right in assuming from the way clause 11(2)(a) is written that, should the member's spouse decide not to disclose, although the member has not done anything wrong, the member is the one against whom the penalty will be applied? Is that right?

Mr. Chairman: Yes.

Mr. Warner: Am I correct on that?

Mr. Chairman: Yes.

Mr. Warner: That in itself is a rather strange notion. It is not beyond our little pale of imagination to envisage that there will be a member who does not get along terribly well with his or her spouse, and the spouse decides, for a variety of reasons: "I am not going to co-operate. I have my own private life and I have my own private businesses and so on. Although we are married, we are not living together, so I am not going to file all this information when I know by not doing so that the penalty will be applied against the spouse with whom I am having this disagreement." That is a neat way to get the spouse into trouble that was not of his or her own making.

Mr. Shipley: I could say a couple of things about that. One thing is that "spouse" is defined so it does not include spouses who are separated. If there is a separation agreement or court order, and so on, that spouse is not involved any more.

Mr. Warner: We have all watched As the World Turns. We know they do not have to be in a legal separation situation.

Mr. Shipley: If it ever gets to the point where you are considering--first, someone has to make an allegation against the member that he has not disclosed. The commissioner will do an investigation. If the commissioner is satisfied there are bona fide reasons for not disclosing, then he can govern himself accordingly. The fact that you do not disclose does not necessarily automatically lead to your being thrown out of the House. There is a whole gradation of things.

Mr. Chairman: I think it might help us through this if we could get, I do not mean a legal opinion, but a little backgrounder for the committee on how you dealt with the family relationships, for example, the problem we have just been discussing.

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The other thing which struck me as odd, and I do not have a good answer to this one, either, is that in the disclosure section, for example, you named the member, the spouse and the minor children, which leaves out other members of the family, other children in the family who would not be considered minors. Surely, it cannot be as obvious as the suggestion made to me, that it would then be sons and daughters who would get all these assets because they do not have to do disclosure.

How did you arrive at the member, the spouse and minor children? Because it is related to the family unit idea? How did you pick and choose? Are these just the practical ways to do it?

Mr. Shipley: In terms of a nonlegal background, the inspiration for the whole bill really comes from Aird, and this is what Aird has recommended. It is basically what this committee recommended when it reviewed Aird, that spouses and minor children of a cabinet minister be included in the conflict-of-interest legislation.

Mr. Chairman: The person who asked me, for example, both the sons and daughter who are not minors--maybe I am wrong--

Mr. Treleaven: If they are 18, they are home free.

Mr. Chairman: Yes, it does occur to me that it is odd that, for example, somebody over the age of 18 who might well be in a position to take over the family business does not have to do a disclosure, but a 17-year-old does.

Mr. Shipley: That is right. As Mr. Aird pointed out, the line has to be drawn somewhere, and he chose to draw it there. Presumably the government chose to agree with Mr. Aird that at the point when the legal obligations to support cease, you have to assume some independence on the part of the adult children and some independence on behalf of brothers and sisters of the member. The line drawing is always difficult.

The other point is that the fact that those people are not included in the disclosure requirements of the bill, are not specifically mentioned in the bill, does not mean that a member will never have a conflict of interest and cannot be investigated through the normal regular means the Legislature has available to deal with conflicts of interest.

Mr. Chairman: You are basically saying that the roots of this are not really in legal opinions or definitions of family units. This stuff was simply drawn from the Aird report on where you draw the lines.

Mr. Shipley: Yes, I think that is correct.

Mr. Chairman: I follow that. I am not happy with it.

Mr. Shipley: Which again, as I said, was endorsed by this committee as well and by the Caplan committee.

Mr. Treleaven: Can I take clause 11(2)(b)? We were talking a minute ago about disclosure of incomes, assets, and so on, coming out of corporations. It talks about the income coming from member, spouse, minor children and the income coming from private companies as defined in the Securities Act. Will you give me the definition in the Securities Act so we know which corporations come in?

Mr. Shipley: "'Private company' means a company in whose constating document"--

Mr. Treleaven: In whose what?

Mr. Shipley: Constating.

Mr. Treleaven: Oh, we are talking about letters patent. Okay.

Mr. Shipley: --"the right to transfer its shares is restricted." Do you really want me to read this all out, Mr. Treleaven? It is quite long.

Mr. Treleaven: What are we saying? In 10 words or less, what kind of corporation is included in this?

Mr. O'Connor: Closely held private corporations, of which the maximum number of shareholders can be 50, I believe. So if you include the member and his wife, that means there are possibly 48 other people whose incomes from that source will have to be revealed according to the definition of clause 11(2)(b).

Mr. Treleaven: This does not include nonprofit corporations, right? It does not include nonprofit without share capital? It deals with it under the Corporations Act?

Mr. Shipley: I cannot answer that offhand.

Mr. Treleaven: Can I get back to this? Following along, we were talking about the income and somebody said, "Oh, you do not have to disclose the income or the assets of where it is coming from." Sure you do. Under this, your statement is going to state what the income of that corporation was for the entire year, and the source of the income.

Mr. O'Connor: The parliamentary assistant is shaking his head. Is that an incorrect interpretation?

Mr. Ward: I thought I heard Mr. O'Connor say that if that private corporation had 48 or 49 other shareholders, they would be caught by the act and have to disclose their incomes.

Mr. O'Connor: No. The income from the company would be disclosed. Thus, some information with regard to the income for those 48 people would be disclosed, because they share in that income. It is none of anybody's damned business, frankly. They are private citizens who are not members of this assembly. That is the danger we are getting into.

Mr. Sterling: I have a couple of questions. Under other conflict-of-interest legislation, is it normal for the affairs of the MPPs to be publicly tabled in the Legislative Assembly? Is that the case in any other jurisdiction?

Mr. Shipley: There are a couple of them that are private. I think Nova Scotia is private.

Mr. Sterling: What do you mean by private?

Mr. Shipley: It is tabled with the clerk or a judge or someone like that and kept there.

Mr. Sterling: How is it handled in terms of what happens to the information? What is the use of the information?

Mr. Shipley: I am not sure.

Mr. Sterling: I am intrigued by the duties of the spouse in this whole scheme of things. I notice the definition of "spouse" also includes a common law spouse, or what is known as a common law spouse. What would be the determination of the common law relationship? How would you determine whether there was or was not one in place?

Mr. Treleaven: Whether it is meaningful, Norman.

Mr. Chairman: They would invoke the designated spouse rule on that one.

Mr. Sterling: I guess so. The other part I wonder about is, although you say that when they live separate and apart in a nonmatrimonial relationship there would be nothing there, the separation, according to the legislation, is only there when the separation agreement is in place.

The fact that the separation may have taken place some time before--if a wife or husband really wanted to force the terms of the agreement, what better way? If the spouse was a member of the Legislature she could just fail to comply with this act and say, "Come into the separation agreement under my terms or I will get you in trouble with this particular piece of legislation," or if she wanted to, she could use it for other purposes in the negotiation on the separation.

Can you tell me what is contemplated in the ultimate penalty section on page 16, clause 16(1)(c): "that the member pay compensation in respect of damage suffered by another person as a result of the member's contravention, in such amount as is specified by the commissioner"?

If, for instance, a disclosure was not made as to the fiscal frailty of a corporation that was owned either by a member or the spouse of a member and, as a result, a creditor of that corporation did not take collective action or some kind of precipitous action to close in on that particular corporation, would that be the kind of compensation that could be awarded to another person?

Mr. Shipley: I do not think it is designed to deal with that kind of situation. Whether it could be, I would have to consider further. This kind of provision is really to deal with those people who have, for example, used insider information to their own advantage, have given themselves a contract, or something like that. It does not deal so much with the failure to disclose but with some of the other breaches.

I agree that it is not limited to that, but that primarily is the penalty to deal with that kind of situation, just the way you always have in the Criminal Code a restitution provision for all sorts of things. Theoretically, you could have restitution for loitering in the Criminal Code, but of course it is not awarded.

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Mr. Sterling: So this act, in effect, by the way it reads now, almost gives a person who is going after a member or a spouse additional rights of action in another forum to seek remedy for a financial loss.

Mr. Shipley: It is only another member who can make the allegation. There is no public right to make a complaint to the commissioner.

Mr. Sterling: This says by another person "that the member pay compensation in respect of damage suffered by another person."

Mr. Mancini: What section are you on?

Mr. Sterling: Clause 16(1)(c).

Mr. Shipley: In terms of invoking the inquiries under the act, it is only another member who can do that.

Mr. Treleaven: It says the investigations, the public inquiries, start as a result of the complaint of another member, the cabinet or so on, but I read that section to say that if there is a loss to a third party--after all, it says, "by another person." It does not say "by another member."

Mr. Shipley: No, I agree.

Mr. Treleaven: So any third party who suffers loss as a result of the member's contravention of this act is open. As Norm said, it is an action for damages, except it is under here and decided by the commissioner, without limits. There is an awful hole that can be driven through here.

Mr. Sterling: A constituent could go to his or her member and say: "I have had trouble with this other MPP over here and I want to get at him. Would you start an inquiry?"

Mr. Ward: The sanctions in section 16 apply only to where there has been an action under the Public Inquiries Act. That is the precondition.

Mr. Sterling: Yes. What I am saying is, the forum becomes somebody coming to my office and saying--I hesitate to use his name--"Dave Warner did not disclose all his shares or liabilities owing against his"--

Mr. Warner: It would more likely be that he did not disclose all his debts.

Mr. Sterling: That is part of your financial disclosure.

Mr. Warner: Do you want to know my financial holdings? Look out in the parking lot.

Mr. Sterling: "He did not disclose all his debts against his car."

Mr. Chairman: No, he got rid of his Omni.

Mr. Warner: I got rid of that, thank goodness.

Mr. Sterling: "I lent him some money and I want to get it. This is the way I can."

Mr. Chairman: I want to pursue this just a bit, because I have had several members come to me and ask why their mortgage should be disclosed publicly. It seems to me they have a point on two grounds. I suppose one is a bit of a privacy argument, but the second one a member discussed with me was very simply that if I do a public disclosure which lists all my assets and liabilities, and among the liabilities are mortgages that I hold on particular pieces of property or money that I owe, does that not give somebody out there who wants to do me damage an accurate starting point to begin that process?

In other words, it seems logical to me that if somebody wanted to influence a member, he would go to the person who has the mortgage on the member's house and convince him to call in the mortgage right away or call in some other loan.

Mr. Foulds: That happened to a Tory candidate in our riding. He had to withdraw from the race. It was done by another Tory.

Mr. Chairman: I understand that the intent of the act is to do the disclosure provisions, and I would say I still fall on that side of the argument. But it does seem to me that those members who have raised the point that disclosing this information may make members vulnerable to some kind of pressure or sanction--have we dealt with that at all? Was that a consideration?

Mr. Ward: I think it should be noted that there are some limitations with regard to the information that is publicly available through the disclosure statement. Mr. O'Connor brought up the point about the private corporation and how it would impact solely on the basis of the member's spouse having an interest.

I do not believe the public document is required to provide the amount of detail, and I think it clearly does provide exemptions throughout the course of the act in terms of what amount of detail is publicly available with respect to the member's private interests that are filed with the commissioner. What I am saying is that not everything the commissioner gets goes out in terms of general availability.

Mr. Chairman: No, but the question was raised with me, and to be a little more specific about it, under the public disclosure statement, as I read it and as the member read it, the fact that they had a mortgage on their house would now become a matter of public record.

They were pointing out to me that while there is a good side to that, that maybe the disclosure is necessary, there may also be a bad side to that, in that if some lending institution decided to foreclose a mortgage, it could exert pressure on a member. If they wanted to buy out that mortgage and exert pressure, we have made that a public document and a public record. Just as when we did the Freedom of Information and Protection of Privacy Act we looked at both sides of the argument, I am wondering whether we looked at both sides here.

Mr. Mancini: Mr. Chairman, if you would let me interrupt for only a second, I have had a lot of trouble dealing with section 12, actually, and in regard to the point you brought up about the mortgage, I have had a lot of

trouble with that today. At one point I thought it did not have to be disclosed, at another point I thought it had to be disclosed, and now I am beginning to think--well, I am not just sure any more.

If we look at section 12, the preamble to the public disclosure statement says that you have to disclose all the following except, and then it says the personal property used for transportation, etc., and a number of other things.

Mr. Treleaven: Clause (d) is the home.

Mr. Mancini: Yes.

Interjection: It is excepted.

Mr. Mancini: Okay.

Mr. Chairman: But the mortgage on the home would be included in the public disclosure statement.

Mr. Treleaven: Correct, and then subsection 12(3) comes along and half waters down the exceptions already given in clauses (f) to (l). It says, yes, you do not have to put in the amount, but you have to say where it is, who holds it, etc.

Mr. Chairman: Could I ask the other question that has been brought to my attention? I think a little bit of the nervousness of some of the members here is that the act, as normal legislation does, allows the Lieutenant Governor in Council to make regulations from time to time.

There is some apprehension that if the disclosure form, for example, was included as part of the bill and everybody knew precisely what the disclosure form was going to be and was assured that is the form and to change that form you have to change the act itself, as I note several American jurisdictions do as a matter of process, that is one thing; but to say, "We will tell you what the form looks like later on" is causing some apprehension.

Have we drafted what the form would look like? Is it possible to include that as part of the bill? Have you given any thought to drafting what the disclosure statement would look like, how complicated it would be and so on?

Mr. Foulds: That is a very good suggestion. I know in a number of bills years ago that I had to do with--I think in education we used to adopt schedules as part of the bill and they would be printed as part of the bill and, therefore, if there was a change, it would have to come back to the Legislature.

Mr. Chairman: That might cause--

Mr. Foulds: That would give them a little bit more--

Mr. Ward: I do not know what this committee did, but would it be helpful to make available the disclosure forms that are used now and the ones that were used previously so everybody gets a better sense? I have some here with me.

Mr. Chairman: I think that would be helpful.

Mr. Ward: I think, not to complicate it, that is the bottom line.

Mr. O'Connor: I think that suggestion is a good one, although it does not solve the problem completely. If we look at clause 11(2)(c), there is an innocuous-looking line there that is just dynamite in terms of the entire act, and that is that it allows the addition from time to time of "any other information that is prescribed by the regulations." They can add it all whenever they want.

Mr. Chairman: That is the point a member raised with me that I think is something we have to deal with. It is one thing to say we all ought to disclose these things and all that and we think we know what we are talking about, and if we included the forms as part of the bill, perhaps we would. But it still leaves the problem that a future government may decide to change, by regulation, what is required under these disclosure things, what form and format it would be. Some members are apprehensive about that.

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Mr. O'Connor: Or the same government, regularly, annually or yearly.

Mr. Chairman: Some American jurisdictions have made it clear: "Here is the form that will be filed. You fill out this form, and it is part of this code or this act." To change that form, you have to change the act, so there are no surprises. If somebody wants to have more disclosure or less disclosure, there is a way to do that, but a little group cannot go away and write a regulation which causes that to happen. You have to bring the act back in. It comes because, frankly, that has been their experience.

Mr. Treleaven: There are a lot of acts that the lawyers on the street deal with, such as the Mechanics' Lien Act and so on--I know it is not called that now; it is the Construction Lien Act--they have form 1, 2, 3, 4; and it is set right as part of the act. Some acts will give you 20 or 25 different forms and they are part of the act.

I am glad you brought that up because I had marked down clause 11(2)(c) and section 17. I was and will be prepared to do one of two things: either section 17 gets deleted or the regulations come along now, so it is not a pig in a poke and we know what we are getting. As Terry said, that is very scary.

Mr. Chairman: The other suggestion that was made to me was that although normally the cabinet strikes a regulation by order in council, it might be desirable to provide that regulations would be struck by a committee of the assembly, which would then take them back to the assembly. The other thing that was suggested is that you make it as part of the act and you cannot change it unless you change the act, so you need to amend. Either way, the Legislative Assembly itself is the agency that causes the change to occur, not the cabinet or some other mysterious group of folks.

Mr. Sheppard: On clause 12(1)(e): take, for instance, personal property. If you had a mortgage on your house and I went and bought that mortgage three weeks before the election and then wanted to raise heck with you, that is a possibility, is it not? I am just using you as an example, Mr. Chairman.

Mr. Chairman: You have the money to do it, Howard.

Mr. Sheppard: You would be surprised.

Mr. Chairman: I know what I am talking about here.

As Mr. Mancini has pointed out, you can read these two or three different ways, and that should not be. This has to be clear as to precisely what is in here.

My reading of the disclosure portion is that you do not have to tell where your address is but do have to declare that you have a mortgage on your home and would probably, depending on the form, have to list who holds the mortgage and, I would think, the amount. In any event, it does not much matter if you have to list the amounts or not if you provide a public document that says, "There is a mortgage on Mike Breaugh's house and this is the company that holds it." If somebody wants to find that out, it is not that difficult for them to get that information.

In several jurisdictions, there have been attempts to make this private information held by a commissioner. Most experiences would be that no matter how you go about it, if you file forms, they might start out being held in confidence by a commissioner but, sooner or later, they would become public documents, one way or another.

Mr. Warner: I have two questions. One is related to the definitions part in section 1. It seems to me that normally, when we define things in legislation, we put them in positive terms. Under "private interest," all you have done is to describe private interest as not including such and such, and you have listed three things. That, to me, seems a rather curious way to define something.

First, you have made it a negative statement rather than a positive statement, but then you leave me wondering what private interest really means. What I know from this is that it does not mean three things. I am not sure what it does mean. Can you tell me why you chose the negative form and left my imagination to wander all over the place as to what private interest is? Why did you do that instead of the other way around?

Mr. Shipley: I think we had to do that, because some of those things, if they were not deemed not to be private interest, would otherwise be private interest. It really says, "Notwithstanding the fact that voting on your salary is a private interest for the purposes of this legislation, it is not going to be covered." I had to take these three things out of the realm of those things that are private interest.

Ms. E. J. Smith: It seems to me that this particular bit is fashioned very much after municipal conflict of interest, which has been in effect for quite a long time and works that way. Is it private interest if it affects your private income in a positive way? These things do not and everything else does.

If you tried to list the things that are private interest, you would spend the rest of your life listing them, but you can exclude broad interest, general public application, etc., and say everything else is. Otherwise, there are many games that people could play, if you started listing them. It prevents gamesmanship, and I think it has worked in the city.

Mr. Warner: I will have to ponder that. Yes, it is just an unusual way to do it.

The other question is with respect to sections 11 and 12, and maybe John can help me as well. Unless I have misunderstood it here, the process is that a member is required to disclose a list of things. That list goes to the

commissioner, and the commissioner in turn prepares a report which is made public. In Quebec, do they do the first couple of steps but have the commissioner hold the report unless there is a question?

Mr. Eichmanis: The information that is given to what is called the jurisconsulte--I am perhaps not saying it properly, but the adviser to members, if you like--all that information that goes from the member to him or her is held as confidential and is never released unless there is a court action of some kind. It is totally confidential. It is as if you were going to your private legal adviser, your family lawyer, and you disclosed all your assets, liabilities and what have you. That lawyer will not turn around and then disclose publicly what you have. The system operates quite differently.

Mr. Warner: Yes. The government obviously knew--you are not Chris Ward. Where did he go?

Interjection: I can answer if you would like me to do so.

Mr. Sterling: Is it the same for cabinet ministers? That is never public either.

Mr. Eichmanis: That is right. It is every member.

Ms. E. J. Smith: Does not subsection 12(5) say it is public? Look at 12(5). You give it to the commissioner, and the commissioner puts it on file where it can be viewed.

Mr. Warner: Yes, that is what I am saying.

Ms. E. J. Smith: Yes. That is pretty clear.

Mr. Warner: Whereas in Quebec, as John is mentioning, you prepare all the information. It goes to the commissioner or whatever the proper term is, and that person holds that information in confidence unless there is a problem raised.

Ms. E. J. Smith: How do you know if there is a problem raised?

Mr. Warner: By way of complaint. You obviously had a choice, either to use this method where everything I put down is revealed via the commissioner and becomes public knowledge or to use the Quebec model. Why did you reject the Quebec approach and choose this one instead?

Mr. Ward: If we go back to section 12--and I really think the point is being missed that, in fact, the public disclosure statement does not necessarily reveal all the information that is made available to the commissioner--these are the exceptions in terms of the public disclosure statement.

Mr. Chairman: The commissioner will have a lot more information than is disclosed publicly.

Mr. Warner: Okay.

Mr. Ward: For instance, the amount of income of the member's spouse. If that income is from government sources, then it is part of the public disclosure statement. If it is from private sources, the source is not public information. The amount is, but not the source.

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Mr. Warner: All right. But, Chris, you are not answering my question. Why did you reject the Quebec approach? Because I understand that they are satisfied and I gather the public is satisfied that their approach is working. I do not know how long it has been in place. Since 1978 or 1979?

Mr. Eichmanis: Since 1982.

Mr. Ward: Perhaps I can respond by saying that the choice that was made is in terms of section 12 on the public disclosure in the documentation and was consistent with both the federal government guidelines and Aird's recommendations, and we chose to follow those. I guess it is a case of choice.

Mr. Warner: Yes.

Mr. Shipley: It would have been a retreat to say ministers who had disclose before now do not have to disclose publicly.

Mr. Sterling: (Inaudible) because ministers do represent the government and members do not represent the government and that does not mean that there should not be two different kinds of schemes for the two different--

Mr. Warner: There are other obligations placed on members of the cabinet in this. They make it very clear. I do not have any problem with--as an elected person, I bring with me a certain public trust. There is no reason at all why I should not be putting on paper what my interests in this world are, no matter how small or how large they are. That is perfectly legitimate thing to be doing.

The public should feel that I do not have anything to hide and I do not have any individual interest to gain by the way I cast my vote or my activities in the House in supporting various individuals or groups, if that is being done in a purely objective or political way but is not being done for personal gain. I do not have any problem with that, but I just wondered why, you rejected the Quebec system--I am no expert on it, but it has been in place for five years and those folks are happy with it--and chose a different way of doing it.

Mr. Mancini: We do not know if they are happy with it or not, David. I have not spoken to anybody from Quebec, any of the members of the assembly, to find out if they are happy.

Mr. Ward: Maybe we could hear from John on this, Mr. Chairman, but I understand that Quebec is the exception to all the others.

Mr. Eichmanis: Yes. Most have disclosure of some kind rather than the Quebec model, which is to make the relationship between the legal adviser to members and the members, all that information, confidential. Most of the other legislation requires some kind of disclosure, whether it is complete, 100 per cent, or partial as this bill suggests, or some other kind. There is usually disclosure of some kind. The American system, too, operates on that basis.

Mr. Ward: I am having trouble. Just in terms of the argument generally, I take it the concern of the members of the committee, and I am not sure it is shared by all the parties, relates to the requirement to disclose. Is that correct? Because I think it is fair--

Mr. Sterling: We have a major concern in our party, which we have not even discussed yet. I would actually like to have the Civil Service Commission in to talk to them. When we are talking about what the legislation should be directed at, rather than what the optics of this piece of legislation are in terms of the feeling in our caucus, it is the influence that people in government have over this government. Therefore, our party is probably going to put forward an amendment to include deputy ministers because they have a hell of a lot--I mean you tell me one deputy minister who does not have more influence than Norm Sterling. You will not find it.

Mr. Ward: I think it is fair to say that was considered very carefully in terms of drafting the legislation. The determination was made that those kind of concerns should best be addressed through other mechanisms, such as the Public Service Act, and what have you.

But I do want to get back to the issue that we have just spent the last hour and a half talking about, and this seems to be this overwhelming concern on the part of private members that they have an obligation to disclose. I hope it is clearly understood that a lot of the other obligations and sanctions within the bill only apply to members of the executive council, such as the whole business of carrying on outside activity, etc.

I just want it clearly understood that the only obligation on private members within this act is the disclosure. Frankly, my question is, what is the big deal?

Mr. Sterling: The big deal is that maybe Dave Warner and Norm Sterling are not putting themselves in a vulnerable position by disclosing, but there may be spouses of members who may put themselves in vulnerable positions because they have to disclose.

Mr. Ward: Vulnerable to what?

Mr. Sterling: Vulnerable to their competitors. If you are in a business and you are heavily indebted at one stage of the game when you disclose your financial position, then your competitors can move in on you at that particular juncture. This is what businesses try to find out. This is how the Freedom of Information Act in the United States is used, by businesses more than anybody else. Why? Because they want to find out what the financial affairs of their competitors are so that they can make a move on them.

Mr. Ward: But it all comes back to the principle of the bill. I do not know how you reconcile whatever concerns a member may have with regard to the obligation to disclose his assets or his liabilities, when you try to barter that in relation to what you are trying to achieve, and this is to satisfy the public's perception and confidence that members are not profiting by inside information or whatever.

Look, I hear what you are saying in terms of your concern. I do not know what the reconciliation is other than a requirement that nobody has to disclose and I do not think that is acceptable in terms of all that we have heard from two committees and an independent report.

Mr. Sterling: Maybe it is to give the commissioner the data for members of the Legislature so that if there is a problem, then it is raised. Or maybe you give the spouse's information to the commissioner, which he does not publicly table.

You just look at subsection 12(3) where, notwithstanding that they will

not say what the value of my residence is, it will be on public record where that residence is. Most of the people in Manotick know where I live, but I do not want some fellow down here who gets disgruntled with me some day and has not got all his marbles to know where my residence is, quite frankly.

Ms. E. J. Smith: Clause 12(1)(d) excludes that.

Mr. Chairman: I take it you have an unlisted phone number, so you are not listed in the phone book.

Mr. Sterling: Actually, I do. That could cause me a problem.

Mr. O'Connor: Just to help answer Chris's question, it seems to me that in the normal course of legislative process, the government proposes legislation to meet a perceived difficulty or a problem or a public interest that has not previously been met. I think it could be successfully argued that with respect to the private member, there is not the difficulty that perhaps prompted this whole legislation: the shenanigans of two cabinet ministers.

We have to distinguish clearly between members of the executive council and the use of their influence, which is significantly greater than the private member's, and the use of whatever influence the private member may have. There have not been instances of private members--and I do not agree with the parliamentary assistant that there is a public perception out there that private members in the course of their duties are unduly exercising their influence unjustly. In other words, I do not think there is a great case that has been made for disclosure by private members of their assets.

The second difficulty, to answer the member's question, that those sections raise is that if you are--I agree--going to require disclosure by the private member, you then have to get into including the spouse, minor children, other shareholders of private corporations and the other group of people who has been mentioned, which I suggest is clearly unfair.

But if the parliamentary assistant can make the case that there is a great lack of public confidence in private members who have abused their position in the past, fine, let us make that case and let us meet it. But I do not think it exists out there. I think the real problems lies with respect to the executive council. It has in the past, and in the recent past, and that is why we were here originally. Why have we suddenly drawn into the net everyone else who by some kind of implication might also be suspicious, which I do not think is a fair assumption?

1700

Mr. Warner: Have you guys forgotten Gerhardt Moog?

Mr. O'Connor: That was again the question of dealing with cabinet ministers.

Interjection: Who?

Mr. Warner: "Who?" he says. "Gerhardt who?"

Mr. O'Connor: How many private members have got themselves into trouble lately? Frankly, they do not have the influence to get into trouble. Why are we including them in the net?

Mr. Foulds: I have some difficulty with that argument, Terry, because it is basically an antidemocratic argument. What you are saying is that the only people who have any influence are cabinet ministers and that private members have no influence at all. That is not true; it may have been true under the last Tory regime and continue to be true under the Peterson regime. It does not necessarily need to be true. There have been members of the Legislature, for example, who have headed agencies, boards and commissions who have had enormous influence. There have been private members who have had enormous influence on cabinet.

Jimmy Allan, when he was a private member, is just one example of that. I imagine that Mr. Allan had a significant influence on a lot of legislation that came out in the last years of the Tory government, even when he was not a cabinet minister. I suspect there might some day even be a Liberal back-bencher who might have some considerable influence. So I do not really follow the argument.

Mr. O'Connor: Name names.

Mr. Foulds: I am not in a position to name names today.

I do not follow the argument. I have no problem about all members of the Legislative Assembly being covered by the legislation. But I do have some problems, as I have read it, about the extent to which this legislation is drafted in the traditional British parliamentary tradition, which gives enormous power to the executive council to, in effect, draft further legislation. Because the section which gives it power to draft regulations, therefore, gives this small group of people enormous power to draft further legislation. That I have some problem with. The suggestion made by the chairman, some half hour or 45 minutes ago, would go a long way to meeting this need; that any amendment to the disclosure form, which is agreed to by the Legislative Assembly, needs to be amended by the Legislative Assembly.

I wanted to ask a couple of questions, after my little rhetorical flourish here. Like myself, there are many teachers who have been paying into the teachers' superannuation fund. Do I understand section 2 to mean that if there is an amendment to the Teachers' Superannuation Act that affects the benefits of retiring teachers, we would have to declare a conflict of interest under this section? I would hope so.

Mr. Mancini: The benefits would proceed just the same, Jim. Don't worry.

Mr. Chairman: The answer probably is, you could receive those benefits yourself; there might be a little question about it. It is probably one of those which is a general public application. Would it not be?

Interjection: Yes. I think that is exempt.

Mr. O'Connor: If that interpretation is correct, then none of us could vote on an amendment to the Health Insurance Act.

Mr. Foulds: The Health Insurance Act is not amended by legislation. It is amended by the executive council, as the last change in premiums indicated.

Mr. Ward: I think you are wrong.

Mr. Foulds: You think I am wrong?

Mr. Mancini: I think it is tradition that it would go to the House.

Mr. Chairman: Unless there are a lot of further questions, have we pretty much reached the end of our little information session?

Mr. Foulds: I just have one other question for information on clause 6(1)(c). I do not understand why in section 6 an employee of an agency, board or commission is exempted. I would think that, for example, Tom Campbell of Ontario Hydro should be subject to that or a former cabinet minister who became chairman of Ontario Hydro or even the Commission on Elections Finances should be subject to that.

Mr. Mancini: Or clause 6(1)(c)?

Mr. Foulds: Yes, why 6(1)(c) is exempted. In some cases I would be inclined to toughen that up. You might have to designate the agencies, boards and commissions that are covered, as they do by various schedules.

Mr. Ward: This goes back to what I said earlier when we were considering. Your point is, then, that crown corporations or other agencies should have the same prohibition that is in section 6. What we considered earlier on was that that this legislation applied only to members. The legislation of those other issues should be addressed through other mechanisms.

Mr. Foulds: Pieces of legislation.

Mr. Ward: The act relates specifically to a code of conduct for members of the assembly. Those other people you are concerned about, assistant deputy ministers, deputy ministers, etc., could be picked up under the Public Service Act or other pieces of legislation, and that is where they are covered now.

Mr. Sterling: What code of conduct do they have?

Mr. Ward: They do have a code of conduct and they are covered under the Public Service Act, which is undergoing a substantial review right now.

Mr. Sterling: Do they have to disclose?

Mr. Ward: Yes, I believe they do.

Mr. Sterling: Where do they disclose to?

Mr. Ward: It goes up as high as the deputy.

Mr. Sterling: Where do they disclose to? Is it confidential?

Mr. Ward: No, they disclose to the deputy. I know we considered all this in the standing committee on public accounts when we were going through our review of the legislation. Can I return to another point that Jim made, his first point, which relates to the definition of "private interest." I do not know whether Allan wants to clarify that further, but my assumption would be that your interest in the pension benefits could be picked up under that definition to not preclude you from participating in that.

Mr. Foulds: Not preclude?

Mr. Ward: You would be able to participate in that consideration because the benefit was extended to a relatively broad class.

Mr. Foulds: I do not think it should be able to, actually.

Mr. Ward: I could be wrong, maybe I am splitting hairs, but I would have thought that private interest would--

Mr. Shipley: I do not know the specifics of the Teachers' Superannuation Act, but certainly there is a class of things where you do share an interest with a much broader class of people.

Mr. Foulds: Okay. Let me give you a specific example. Members who are former teachers have the right--and I think there are two other classes, members of the House of Commons and members of municipal councils who are teachers on a leave of absence from teaching to fulfil their public duties--to continue to pay into the teachers' superannuation fund while they are employed in this other activity. Therefore, they can continue to build up their pension.

In our case, for example, if the matter of the teachers' superannuation fund comes up before the Legislative Assembly, we can vote or we have been able to vote on any improvements to the teachers' superannuation fund. That benefits teachers as a class but, in my view, it is a particularly small class, it is not of general interest and it might particularly benefit me.

I have not participated in votes on the Teachers' Superannuation Act for 12 or 13 years, since I realized that it had this implication, but I have never had to disclose that. I think I should have to disclose it and I do not think I should participate in the debates.

Mr. Chairman: In a sense, the Municipal Conflict of Interest Act is actually tougher than this. I am sure that it would hold that in that instance if you benefit by this particular motion of the council, you must declare the conflict and you cannot vote. One of the things again that has been brought to my attention, and maybe that is part of the process that does need to be tightened, because there are members who--we were discussing ordinary members earlier--there are ordinary members voting regularly on legislation which has, in the eyes of the public, a direct pecuniary interest for them personally or for members of their family. They perceive that to be a conflict. This bill does not preclude them from doing that.

1710

Mr. Shipley: But there are other provisions. The standing orders prohibit you voting on any question in which you have a direct pecuniary interest.

Mr. Chairman: The standing orders provide you with an opportunity to stand up and say, "I do not want to vote on this because I have a conflict of interest," but they do not prohibit you from voting and no one could challenge. No other member could stand up and say, "He is in violation of standing order 22." The member can stand up and say, "I do not want to vote on this," but nobody else could challenge it. They are not breaking any laws. It is code-of-the-west stuff.

Mr. Ward: But the issue Jim speaks to is covered by the Legislative Assembly Act.

Ms. E. J. Smith: Having been the most recent of these to have been

in city council since the conflict-of-interest rules were brought in, I would say in answer to Jim's question that the people on city council, for their own sake, interpret things very strictly.

If they have a daughter or son who is a teacher, they tend to stand up and state the reason for their conflict, as well as their conflict. For their own sake, they interpret it very conservatively, because if you are part of that big a group, your vote is not going to make any difference anyhow, so why take any chance? That is what generally happens at city hall. They declare those all the time.

Mr. Bossy: Should we declare a conflict of interest if we are voting on our own salaries?

Ms. E. J. Smith: That is different. That is excluded for the reasons stated here.

Mr. Chairman: Could I ask one final question from the chair? One thing that struck me as odd, and I did not really notice it until I went through the act again this morning, is how does one declare, "I have a conflict of interest here"? Under what provision of this act do you register your opportunity to avoid a conflict? Do I notify the Clerk? Do I talk to the Speaker? Do I rise in my place?

If there is going to be a law now that says I am not just breaking somebody's guidelines and being a bad boy, I am breaking the law, it struck me that I might want to have the formal mechanism of registering that, "I believe I have a conflict here and I want it registered on the record of the proceedings of the assembly that I declared my conflict on this bill or at this committee hearing," or something like that. I do not see any mechanism for doing this.

Mr. Treleaven: Can I answer that, Mr. Chairman? A conflict of interest for a member in the chamber, and I suppose in committee--the only time a member can abstain from voting is on a conflict of interest. He would stand in his place, declare his conflict of interest and say, "Therefore, I will be abstaining from the vote." That is in our precedents.

Mr. Chairman: Yes, but I am not concerned about that. I would now be breaking the law. I am not breaking the rules of the club. I am breaking the law. It strikes me that I might want to preclude any further legal action by being able to register that I have a particular conflict and it may not be on something that is before the assembly or before a committee. I may want to sign a piece of paper and file it with the Clerk or something like that. There is no provision for that here.

Mr. Shipley: You can ask the commissioner for an opinion and you can disclose his opinion.

Mr. Chairman: That is all I could do?

Mr. Shipley: Yes. I do not think you are precluded from doing anything else, but that is a specific avenue that is open to you under the act.

Mr. Ward: Your point though, Mr. Chairman, really begs the question, what more would you like? If you feel that you have to have a requirement to stand up and declare a conflict of interest and not vote on a particular issue, you have that available, I think, under the standing orders or under

provisions which may be available in other legislation, such as the Legislative Assembly Act.

But, frankly, beyond that, if it is merely to have in some formal way clarification that you are absolved from any wrongdoing as a result of having declared that you are not voting, etc., you can have that opinion by the commissioner as your statement of clearance or whatever. It seems to me your problem is more one of perception than anything else.

Mr. Chairman: Yes.

Mr. Ward: That is the whole point of going to the commissioner and asking for a ruling. It is to clear up and to resolve the perception arguments.

Mr. Chairman: My reading of the bill says that the one area where it has not quite got what it ought to have is the perception part of it. The public may want to say, "How many times did this guy declare a conflict of interest?" They will look up the record and the record will show never. They may be persistent and read through all the Hansards for that year, but I doubt it.

I would imagine that what they want from the public's perception is, when did he register a conflict on something? Just to pick an example out of the air, it may be for a timber-cutting licence--not that we have ever had that kind of conflict--but in that instance, you see, there was no bill before the House; there was nothing before committee; but there were those here who felt that somebody had a conflict of interest there.

Mr. Ward: Surely that is why you have the mechanisms in there. It would be in the interest of the member to go to the commissioner and say: "This is the nature of my interest. Will you issue a ruling and give me advice?" His advice may be, "You are okay as long as you do not vote or participate." That is your--

Mr. Chairman: You see, we spent all last summer, for example--it is not quite dead on--but in that instance disclosure provisions of a sort were there.

Mr. Ward: Right.

Mr. Chairman: The forms were filled out, the papers were filed and still it was held there was a conflict of interest.

Mr. Ward: He had no place to go, though, as I say.

Mr. Chairman: That is right. It was not voting on a bill. It was not on a matter that was being discussed in a committee. The defence argued that he had, in fact, gone to what was then the equivalent of the commissioner, sought advice and been cleared. Despite all the filing of pieces of paper, despite all the advice, it was still alleged that there was a conflict. Do you follow my point?

Mr. Ward: What was then assumed to be the substitute for a commissioner? Was it the assistant deputy minister?

Mr. Chairman: Yes.

Mr. Ward: That has not been accepted at any time that I can recall as being an adequate avenue. That is the whole point.

Mr. Chairman: Yes.

Mr. Ward: Everybody discloses, even parliamentary assistants with the assistant deputy minister, civil law. It does not help you at all. I would guarantee that every one you have raised has already filed with the ADM, civil law, and that it has not moved beyond that.

Mr. Chairman: Okay. That is something else we may consider. Are there other members who have other questions?

Mr. O'Connor: I have a point of order as the last item before we--

Mr. Chairman: No further questions? What is your point of order?

Mr. O'Connor: I would just give notice, if I may, of a motion I intend to bring at the commencement of proceedings tomorrow, a copy of which I will file with the chair, if you wish, which is to delay our proceedings further until we can have public hearings to include presentations of officials from legislatures across Canada and other experts in the field. I would ask that that be dealt with and debated and voted upon as the first item of business tomorrow.

Mr. Chairman: Any further business? We are adjourned until tomorrow.

The committee adjourned at 5:18 p.m.

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

MEMBERS' CONFLICT OF INTEREST ACT

WEDNESDAY, JUNE 17, 1987

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STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitutions:
Foulds, J. F. (Port Arthur NDP) for Mr. Martel
O'Connor, T. P. (Oakville PC) for Mr. Villeneuve
Ward, C. C. (Wentworth North L) for Mr. Morin

Clerk: Forsyth, S.

Staff:
Schuh, C., Legislative Counsel
Eichmanis, J., Research Officer, Legislative Research Service

Witness:

From the Ministry of the Attorney General:
Scott, Hon. I. G., Attorney General (St. David L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 17, 1987

The committee met at 3:31 p.m. in room 228.

MEMBERS' CONFLICT OF INTEREST ACT
(continued)
LOI DE 1987 SUR LES CONFLITS D'INTERETS DES MEMBRES DE L'ASSEMBLEE
(suite)

Consideration of Bill 23, An Act to provide for greater Certainty in the Reconciliation of the Personal Interests of Members of the Assembly and the Executive Council with their Duties of Office.

Etude du projet de loi 23, Loi assurant une plus grande certitude quant au rapprochement des intérêts personnels des membres de l'Assemblée et du Conseil des ministres avec les devoirs de leurs fonctions.

Mr. Chairman: We have a quorum. We will deal with the notice of motion that has been presented by Mr. O'Connor. Yesterday the committee set aside clause-by-clause examination of Bill 23, scheduled for June 17 and 18, until after public hearings can be arranged and held by the committee. Hearings may include presentations by officials from Legislatures across Canada and experts in the field. Is there any debate on the motion?

Mr. O'Connor: We had some considerable debate on this subject yesterday, so I will not belabour the point to any great extent. A few comments I might make, though, are as follows--shall we adjourn until Mr. Mancini comes up?

Mr. Chairman: No, continue.

Mr. O'Connor: I would suggest that yesterday's session of the committee was particularly useful in terms of the very question I raised by way of my motion. Yesterday we took the time for an explanatory session with staff present, and they are present again today. I think it became obvious during the two and a half hours that we were discussing the bill in a very general way that there are a myriad of questions and unresolved issues within the bill.

That was obvious from the difficulty--understandable difficulty, I might say, and I am not saying this by way of any criticism whatsoever--of the Attorney General's staff to answer some very basic questions about some of the primary sections in the bill, particularly sections 11 and 12.

It became more evident to me, if it was not evident before--my remarks might have indicated it was evident--that it is necessary to hear from additional personnel, additional experts in the field from other provinces and other common law jurisdictions who have delved and ventured into this area as to their experiences.

As I indicated yesterday, I have done some analysis of the statutes that exist across the country. We found that some four provinces have recently enacted legislation in this area which included disclosure by private members, which is an area of particular concern to myself. Further, it appears that

eight provinces have enacted legislation similar to this, which includes senior civil servants. That is another area that members of our caucus intend to introduce into the bill by way of an amendment when we get to clause-by-clause analysis.

Given the significant questions that did arise yesterday and the virtual impossibility--and I can say from my point of view that we now consider it virtually impossible to deal with the bill in all its phases prior to the House rising a week from tomorrow--we indicated for the record yesterday that it is our wish that should the committee not accede to our wishes to revert to some kind of public information process, we would deem it necessary, because of the number of people in our caucus who wish to have input to the bill, to deal with some of the amendments in committee of the whole House--that is, back in the House--and not necessarily in its entirety before this committee.

I am simply saying that it really is a complicated, complex matter. It is the first time this province has got into this area. It is not something that has been in existence and that we are amending or tinkering with. It is something that is brand-new and deserves and warrants a full public discussion, something that vitally affects the members of this House and is of personal interest to all of us on this committee. For a variety of reasons, which I went into yesterday and said I will not belabour today, we feel some kind of public discussion is necessary. I therefore place my motion and would ask that all members give consideration to supporting it.

Mr. Sterling: I am, of course, supporting my colleague's motion, but I think that a couple of additional points are necessary. The work of the committee is important to carry out and try to complete, but the problem is that within our own caucus, on any one amendment, any one section, there may be a difference of opinion. When we get into committee of the whole House, when we take it back for third reading, there may not be party unanimity on any one particular section. On a bill such as this, which affects the personal nature of each MPP's life in the future, there probably is as good a reason as on any bill to allow free votes in certain areas. I suspect that when we get back into the Legislature, there may be a difference of opinion even within our own caucus on certain matters, on amendments that are brought forward here.

I just do not know how long it is going to take when it gets back to the House, in committee of the whole House. If we are trying to rise by June 25, I think it is unrealistic to think we are going to finish this thing up before that time. If we assume that is going to be the case, then I would like to go ahead with some public hearings to hear some other experiences in some other jurisdictions with this particular matter. If you do not make that assumption, then maybe some of the members are going to try to complete this bill by June 25. Knowing of the discussion within my own caucus walls, I suspect that is not going to be possible, even if the Legislature commits all of its legislative time between now and June 25 to this one particular piece of legislation.

So I do not know what we are going to achieve: (1) by going through this on a clause-by-clause basis in the caucus and (2) by putting it back in the House without having the public hearings. We may get down the road to some degree if we do have the public hearings at this particular juncture or do that over the summer period.

Mr. Foulds: I find myself in a difficult position. First, I understand the theory of public hearings and appreciate the need for public hearings on important legislation. I also believe that public hearings on

important matters of legislation are, by and large, a good thing. However, I am not fully conversant with all of the history of the legislation and of the situation in which we currently find ourselves. But even as members of the Legislature, we have some passing interest in this legislation and in the history of it.

1540

As I recollect, a committee had hearings into the conflict of interest over Ms. Caplan and witnesses were called to that hearing. There were hearings over the matter of a conflict of interest with Mr. Fontaine and witnesses were called to those hearings, as I recall.

I believe, although I am not actually sure of this because I was not a member of the committee at that time, that at least some committee members, or members of this committee in a different format, flew to a number of foreign jurisdictions where they inquired about conflict-of-interest legislation in those jurisdictions.

I understand also that the Aird report was a fairly thorough report. I do not have a personal account from Mr. Aird about whom he consulted, but as I recall, one of the more eminent legal counsels of the province was a consultant for Mr. Aird. That was J. J. Robinette, was it not?

There has been considerable input into where we are at with the legislation, so while I sympathize with the concerns of the Progressive Conservative members and understand their lust for democracy, I also wonder whether, frankly, this is not merely a delaying tactic so that conflict-of-interest legislation affecting both executive council and private members will not become a reality in the province in the very near future.

Interjections.

Mr. Treleaven: Where did democracy go in the New Democratic Party?

Mr. Foulds: That question just naturally floated to the top of my mind. If that question had not floated to the top of my mind--I cannot put it aside or asunder. Therefore, all I say is, I would find myself having very great difficulty supporting this motion. I am not sure about my colleagues. They will have to speak for themselves.

Mr. Sterling: He is not even voting.

Mr. Bossy: I wanted to make a very short comment. It sort of goes along with what has been said. I believe we have heard nothing in two years of discussions on conflicts of interest but "Why did the Premier not do this?" and "Why does the Premier not do that?"

Here we have a bill to take care of what the requests have been. Every one of you here, because you have been involved in the committee work that we did on the two conflicts of interest--there is no railroading here, by no means. I think we have a bill here that can be proceeded on.

Interjections.

Mr. Chairman: Mr. Bossy, you are baiting the geriatric ward; be careful there.

Mr. Bossy: If the bill needs amendments, you propose them, and if they are compatible, I am sure we will look at them. But I say this: In all fairness to every member in this House, we need some protection. I can assure you we have not heard the last case of conflict of interest. At least if we have a document and we have--

Mr. Foulds: I hope we have, after this bill.

Interjection.

Mr. Bossy: I do not know, Mr. Sterling, but you have had quite a little role to play in the other areas. You were one of the accusers: "Why did the Premier not act?" We are acting. Let us deal with this--

Mr. Treleaven: With legislation that exempts the Premier.

Mr. Bossy: Forgive me, I do not think I have to respond to that, but I feel--

Mr. Treleaven: You are right.

Mr. Bossy: This happens to be a new government. I can assure you that we are not dealing--whether Mr. Davis had guidelines, and they were only guidelines, now we have legislation that would become law. Guidelines can be interpreted any way you know how, but a law then must be interpreted by people who know the law. I am not a lawyer, but I ask the lawyer if I do not understand.

Mr. Foulds: I would not--

Mr. Chairman: Let us proceed.

Mr. Ward: Very briefly, last summer I and other members sat for some 10 weeks in the standing committee on public accounts. It was an excellent--

Interjection.

Mr. Ward: Pardon me? That was the public accounts committee, and when that committee ordered its business, one of the things it determined to undertake was a complete review of conflict-of-interest legislation. If members of the official opposition would care to read that report, they will note that most of the recommendations from that committee dealt with the need for legislation. Frankly, I cannot accept the notion that this whole issue has not had thorough and careful consideration.

I recall that I sat with the member for Carleton-Grenville (Mr. Sterling) in a radio studio some months ago, at which time he accused the government of stalling on this and not proceeding with the legislation.

Mr. Sterling: I am eager.

Interjections.

Mr. Chairman: Will the Deputy Speaker calm down.

Mr. Treleaven: This is the member for Oxford.

Interjections.

Mr. Chairman: I have one other visitor to the committee, who is not a member of the committee today. I know you are anxious to hear his gentle words of wisdom, so I am going to recognize Mr. Martel, even though it is unusual.

Mr. Martel: I want to thank the chairman for recognizing me.

Mr. Chairman: I am always happy to greet someone from--

Mr. Martel: I missed all the trips abroad when you fellows were touring.

Mr. Sterling: So did I, so I think we should go first chance.

Mr. Martel: I thought that was behind it. You want a trip. Where would you like to go, before I make my remarks? Tell me where you want to go. I want to see if it is worth while going with you.

Mr. Sterling: To the Mother of Parliaments.

Mr. Martel: That is not a bad idea.

When I came in I could not believe what I was hearing, quite frankly, about this legislation. You have to understand. Somebody mentioned guidelines: the guidelines managed to get a number of Liberals in trouble. In fact, quite to my amazement, one of them still persists in being out there like a--what would you call it?--a floating--

Mr. Mancini: Stick to the bill, Mr. Martel.

Mr. Martel: I am speaking to the bill. I am.

Interjection.

Mr. Martel: No, I am not a waffler. Oh, you have even managed to gather a few of those around you too. But do you know, he is out there like a corkscrew and he has not learned a thing yet. Maybe you need legislation, I do not know. I can only go by what I hear in the House, Mr. Mancini, that he has not filed all of his stuff properly yet. Whether that is true or not true, I simply make the point that the guidelines got people in trouble.

This committee did travel to other jurisdictions--I was not a part of it then--to get a handle on conflict of interest, I think. Am I right, Mr. Chairman? Yes, I am right about that. So you did travel. You had two committees: one that acted responsibly and got the job done--

Interjection.

Mr. Martel: Will you listen, Mr. Sterling? One committee did the job responsibly last year, got the job done without all the name calling, got a report through. It went into the House. There was no conflict in what was written--all in the open, too, nothing in camera, unlike that other committee, which was a bit insiduous if you do it in camera. I am glad you are here; it is for your benefit or edification.

We got through it. I think all of us agonized through that period. None of us relished that task. We have had a bill before us, the original, I guess, introduced in November 1986, with a replacement, some modification in May of

this year. It could still use a little remodelling and some improvement, but to want to postpone--

Mr. Sterling: Who said that?

Mr. Treleaven: No, we do not want to postpone. We want public hearings.

Interjections.

Mr. Martel: What you are really doing is postponing.

Mr. Treleaven: Not at all.

Mr. Chairman: Be correct, Mr. Martel. What the motion says they want to do is set aside, not postpone.

Mr. Martel: What is the difference?

Mr. Treleaven: You know is it has a great difference.

Mr. Martel: A rose by any other name is still a rose, and you people are simply trying to stall. I cannot understand it. We know what we have gone through. Everybody on this committee here today has sat through at least one of the hearings. Unpleasant. We have to proceed. I can see absolutely no reason, and I think we proceed immediately. We do not postpone, delay, hinder or any other words you want to use or any other weasel words you want to use for delaying it, but I do not think your motion is going to carry, quite frankly. I think we are going to proceed.

Mr. O'Connor: You are not going to vote against it.

Mr. Chairman: I think we are ready.

Mr. Martel: I cannot vote. That is my problem.

Mr. O'Connor: Before putting the motion, may I ask for the necessary 20 minutes to get our members together?

Mr. Chairman: The way the process works is that first we have a voice vote and then you may request a recorded vote.

Those who are in favour of Mr. O'Connor's motion, please indicate by raising your hand.

Those who are opposed to Mr. O'Connor's motion?

Motion negatived.

Mr. Treleaven: A recorded vote, Mr. Chairman.

Mr. Chairman: We have a request for a recorded vote. I am going to adjourn for 20 minutes and I will point out to members that if you are in the room, you do have to vote.

The committee recessed at 3:51 p.m.

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The committee divided on Mr. O'Connor's motion, which was negatived on the following vote:

Ayes

O'Connor, Sterling, Treleaven, Turner.

Nays

Bossy, Foulds, Mancini, Newman, Ward, Warner.

Ayes 4; nays 6.

Mr. Sterling: As I mentioned before, there are so many members in my caucus who have an opinion on this particular bill that I do not know what we are going to achieve by going over this bill clause by clause in this particular situation. I see the parliamentary assistant nodding to the Attorney General (Mr. Scott), so I think I am going to get agreement on this particular amendment--

Hon. Mr. Scott: Do not count on it.

Mr. Sterling: --or on this particular motion from the government side. We will probably be wasting our effort in going ahead in the committee in that it is going to be difficult for the members of the committee to reflect the overall opinion of which way people will vote in the Legislative Assembly on this piece of legislation.

Mr. Foulds: Is your caucus that badly split?

Mr. Sterling: On certain sections it was. We admit that we allow, in certain cases, in certain pieces of legislation--

Mr. Treleaven: We have true democracy in our caucus.

Mr. Sterling: That is right.

Mr. Foulds: So do we. Warner and I on the same committee: that is democracy.

Mr. Treleaven: Not flexible, right.

Mr. Chairman: Order.

Mr. Sterling: At any rate, there are a number of amendments we want to put forward. There are a lot of people in our caucus who want to speak on this particular matter. When we talked about considering the bill last week, you, Mr. Chairman, suggested that perhaps it was fruitless to go in a clause-by-clause consideration of it in committee and that it might be better to return it right to the committee of the whole House. I am of the opinion that that is probably correct at this time, that it would be best to turn it to committee of the whole House at this time.

Mr. Chairman: Mr. Sterling moves that Bill 23 be reported to the House without amendment.

There might be some concern that the motion is out of order, but I would remind you that last week when we ordered the business we did so by agreement and not by motion. It therefore strikes me that the motion is in order. It might be a little unorthodox to set out to do your business one week-- If we had done so by means of a motion, I think I would have a little bit of difficulty with it, but we did not do that. We sought agreement, as is our tradition in here, and because we did it by agreement last week, it would seem to me that a motion this week that is somewhat contrary to that may be unorthodox, unusual and weird, but it is in order. It is on the table.

Mr. Warner: There are two aspects I wish to draw attention to. The first is not the substance but the fact that the reason we had adopted a course of action last week by agreement was really in keeping with the normal functioning of this committee; that is, over the last two years we have attempted as much as much as possible to develop by consensus how we were going to proceed and to stay away from formal motions unless absolutely necessary.

That process has served us well. Quite frankly, I think it has served the assembly well. Through that process, we have avoided a lot of bitterness on issues. We have been able to deal with matters expeditiously in most cases and not unnecessarily clog up the process with motions that were obviously going to fail. It has been a healthy exercise.

It disturbs me a little that we now have a motion that says we are going to send it back to the House, because in the first place, that tells me I should have placed the motion last week to order the business. I guess from here on I have to rethink how I function in the committee. That bothers me.

On the substantive side, I want to review with you. Maybe you can answer my questions. The original bill was introduced in November 1986. Is that correct?

Mr. Chairman: Somewhere around there.

Mr. Warner: The subsequent bill, which differed somewhat but not in a major way, was introduced on May 5 this year. Is that correct?

Interjection.

Mr. Warner: We had a second-reading debate, which was open and available to all members to express whatever concerns they had. I take it that those concerns, now on the printed page in Hansard, have probably been reviewed by the Ministry of the Attorney General and others.

Naturally, I am not privy to the Conservatives' caucus meetings. Wishing to retain my sanity, I probably do not wish to participate in those meetings.

Mr. Foulds: Among other things you would like to retain.

Mr. Warner: In our caucus, and I assume certainly in cabinet and probably in the Liberal caucus, there was an opportunity for this subject to be discussed. In our caucus we not only discussed it, we took a vote on it. We determined what our position would be and then carried on. One must assume that is a natural process for a political party.

Either the Conservatives did not do that or they could not come to an agreement within their group. In any event, their confusion is now being

foisted upon us. I find that a little strange, and I am not sure why I should accept their confusion.

As I said yesterday and repeat again today, we have studied the matter. We have paid attention to the visits to other jurisdictions. We have reviewed all the material that was available, and there are copious amounts of material available. We are prepared to proceed. We have three motions. We have three amendments we are proposing, and we would like the form that is used to be attached to the bill and be a part of the bill. That is it.

We are quite prepared to go through clause by clause and do the work we are paid to do. Maybe the mover of the motion would carefully consider that we stick to our original plan, which was to continue today--start the bill today--until six o'clock or whenever the bell rings. I think there is a vote later today. We would then work tomorrow after routine proceedings to try to accomplish as much as we can and, at the end of tomorrow, see where we are and make a judgement at that point as to how we proceed. Frankly, I do not see any reason to differ from that course of action, which we determined last week.

Mr. Mancini: Personally, I am very disappointed with the motion, principally because the Attorney General has made time to be with us here today. I think we could have had a lot of our questions answered today and we could have had a reasonable debate on some of our views.

I think we have just wasted the whole afternoon. The first motion really was to set the bill aside, and then we have this motion here now to send the bill back to the House. If we support this motion, basically this committee has really not done its job. All we have done is waste a couple of very valuable afternoons as we come near the end of the session. I am hoping maybe Mr. Sterling will withdraw his motion and at least take the opportunity, because as a member of this committee, Mr. Sterling, you and your colleagues are representatives of the Conservative caucus and you guys should at least be cohesive enough to have three or four of you here to be able to speak for the whole caucus, especially when they send three lawyers at a time.

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I understand that when we get back to the House after the bill is reported by the chairman, other members of your caucus will, as normal, be able to speak, and that is what the legislative process is all about. No one is changing the legislative process. But just to flatly deny the responsibility we have been given by the House and just to flatly ignore the opportunity to ask the Attorney General questions and to participate in a debate with him on matters that concern members of the committee really is an abuse of the process.

It is evident to me that the Conservative members really do not want any bill at all, whatsoever. Whether or not I agree with every single section of the bill, at least I am willing to participate in the proper committee framework; at least I am willing to participate with my other colleagues in a debate with the Attorney General, and I am more than willing to allow the process to take its natural course. My colleagues, both of whom--the third one has now left--have been schooled in the law and have been here in the Legislature for at least two years, should know the process a little bit better than you have tried to demonstrate today. What you are doing is distorting the whole process. That should be placed on the record.

At the same time, I do not want in any way to minimize your concerns. You are all elected. You are all here to do a job. You are here to represent your party and you are here to express those concerns as best you can, as long as you can and as vociferously as you can. No one wants to take that right away from you. But you are denying us the opportunity to ask the Attorney General questions and you are denying us, this committee, the opportunity to do any work whatsoever before we go back to the House. All your talk about democracy early on and about setting the bill aside to hear a number of people, that is all a bunch of baloney, now that I have seen Mr. Sterling's motion.

Mr. Bossy: On a point of order, Mr. Chairman: If that motion should carry, would it preclude placing the amendments in the House?

Mr. Chairman: I am assuming that if it went to committee of the whole House, amendments could be placed there.

Mr. Bossy: Would we also assume that if it did go back to the House, it would go to committee of the whole House?

Mr. Chairman: The House does not tell this committee how to order its business and this committee does not tell the House how to order its business. Both groups make up their own minds.

Mr. Ward: We all know how the rules operate in this forum, and I am deeply disappointed that Mr. Sterling feels it is inappropriate for this committee to try to deal on a clause-by-clause basis with the specifics of this bill. As you will recall, Mr. Chairman, it was your request that the bill come to this committee because you felt we did have some expertise and some insights to offer. You hoped we could work together to take a look at the legislation, refine it as needed and make the presentation back to the House. But given the little experience we have had so far and our knowledge of how the system can work, I, for one, do not relish the prospect of 20-minute vote calls on every clause and all of the other little gimmicks that serve to delay the process here, only to be followed again by the same procedure in committee of the whole House, which no doubt will take place because it is quite clear that one party in this Legislature does not want to see this legislation proceed.

Frankly, I think this debate might just as well take place in full public view in the Legislature as in this committee and, with great reluctance, I would support Mr. Sterling's motion because, frankly, I would like to see more of this discussion in full public view.

Mr. O'Connor: Having heard the last speaker, I will pass. I would not want to be accused of delaying the proceedings of this committee.

Mr. Foulds: I know that consistency is the hobgoblin of small minds, as Emerson said.

Mr. Chairman: Emerson who?

Mr. Foulds: Ralph Waldo, your old friend.

Mr. Chairman: Not the rock group? Okay.

Mr. Foulds: But I do find this motion absolutely inconsistent with the previous motion put forward by the Conservative Party. I know that this

hearing of this committee outside of the Legislature is not the kind of public hearing that they want, but this committee could hear concerns by any member of the Legislature. Any member of the Legislature can come in, make representations to this committee and indicate his concerns. Frankly, I would have liked to have seen the Tories who are concerned about declaring their conflict of interest as private members come into this committee and do so.

Mr. O'Connor: We would then be accused of delaying.

Mr. Foulds: I also find it passing strange that the Conservative Party that wanted a full, frank and open discussion is now denying itself the opportunity to have not only the opinion of the Attorney General but also the opinion of his officials put forward in explaining certain sections of the bill.

Interjection: Not from the officials.

Mr. Foulds: That cannot happen in the House.

Mr. Sterling: Sure it can.

Mr. Foulds: The officials can whisper to the Attorney General, who can then decide whether to pass on the information from those officials. In fact, the Conservative Party is now denying the open debate to this Legislature that was possible if we had had committee hearings. Frankly, I resent that. I resent that as a member of the Legislature, I resent it as a member of this committee and I find it an abuse of the process.

If you want to postpone and delay the bill, why do you not have the guts to say that? If you do not want the legislation ever to pass, if you do not want conflict-of-interest legislation to apply to private members, because you are all now private members, why do you not have the guts to say that?

Mr. O'Connor: We did say that yesterday.

Mr. Foulds: That being said, there is, in my view, the same view as Mr. Ward. Why should we go through this committee for two or three clauses, which we would get done by tomorrow, then have the bill referred to committee of the whole House, whereupon the government will force the whole House to sit until the bill is passed?

I want the Tory members to realize that what they have done is not only to break the agreement that was made at this committee a week ago but also to break the understanding that was made amongst the House leaders that this House would adjourn on June 25. Let me tell you something, fellows. If you think you guys and us guys, girls, ladies and gentlemen are not going to be sitting in July to make sure this legislation is passed before the government calls the election in August, you, as Conservative members, are living in a pipedream. End of speech. Thank you.

Mr. Chairman: Are there any further pearls?

Mr. Bossy: I have a comment. Mine is going to be short. Formerly being a farmer, I will repeat something that has been said many times. I would have to agree that the fact is when you thresh old straw, you cannot get much out of it, so that we would be threshing old straw.

Mr. Chairman: I am going to let Mr. Sterling conclude.

Mr. Sterling: I thought all the speeches were fine, but they were--

Mr. Chairman: I want to remind you that you have everybody voting for your motion. Do not drive them offside.

Mr. Sterling: The agreement last week, for those members who are so taken aback by this motion--

Mr. Foulds: We are not taken aback. Nothing from you guys takes us aback.

Mr. Sterling: The agreement last week, as I understood it, was that we were going to sit at the beginning of this week in order to determine whether we were able to get anybody in front of the committee in a short period of time and then proceed from there. That was my understanding of the agreement last week, and that is why our caucus agreed to it at that point in time. It did not require a motion.

I understood that some hesitancy was expressed at that time about considering this bill clause by clause in this committee because of the very personal nature of this bill in terms of each member of this Legislature. That sentiment was echoed not only by myself but also by other members of the committee. Having people from the Attorney General's staff here yesterday and questioning them on various sections of the bill convinced me there are many more questions about various sections than I thought there were before. There were a lot of questions, but there were few answers or sure answers as to the effects of various parts of this piece of legislation.

Our caucus has---

Mr. Mancini: Excuse me, on a point of order: Mr. Sterling, if that is the case, we have the Attorney General here today. Why did you not ask him those same questions and why did you not try to elicit the answers?

It is absolutely ridiculous for him to give this kind of speech, to try to say that staff yesterday--I have been in the Legislature now for almost 12 years and I know all the games all the political parties have to play, but really, we are dealing with an important piece of legislation that is going to affect every member of the House. The games I have seen this afternoon are absolutely the worst I have seen in all my years in the House.

Today you try to blame the staff, Mr. Sterling, for not giving you right answers or the answers you wanted. You have the Attorney General come here today and you do not have the decency to ask the man a single question. It is outrageous.

Mr. Chairman: I knew you were rattling the cage a little too loudly there, Mr. Sterling.

Mr. Sterling: I guess the bottom line is that our caucus wants to deal expeditiously with this bill and we see this as the method of doing that.

Mr. Chairman: You have a motion before you that the bill be reported to the House without amendment, and I take it, though it is not part of the motion, that you mean today?

Mr. Turner: Yes, if it is possible.

Hon. Mr. Scott: Do you want 20 minutes to collect your members?

Mr. Chairman: Those in favour of Mr. Sterling's motion? Those who are opposed?

Motion agreed to.

Mr. Chairman: The bill will be reported as soon as possible, perhaps even by the end of the afternoon. Is there any further business? The committee stands adjourned.

The committee adjourned at 4:33 p.m.

Government Publications

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL
ASSEMBLY-TO-ASSEMBLY ASSISTANCE

WEDNESDAY, JUNE 24, 1987

LIBRARY

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

CHAIRMAN: Breaugh, M. J. (Oshawa NDP)
VICE-CHAIRMAN: Mancini, R. (Essex South L)
Bossy, M. L. (Chatham-Kent L)
Martel, E. W. (Sudbury East NDP)
Morin, G. E. (Carleton East L)
Newman, B. (Windsor-Walkerville L)
Sterling, N. W. (Carleton-Grenville PC)
Treleaven, R. L. (Oxford PC)
Turner, J. M. (Peterborough PC)
Villeneuve, N. (Stormont, Dundas and Glengarry PC)
Warner, D. W. (Scarborough-Ellesmere NDP)

Substitution:
Barlow, W. W. (Cambridge PC) for Mr. Villeneuve

Also taking part:
Johnston, R. F. (Scarborough West NDP)

Clerk: Forsyth, S.

Staff:
Eichmanis, J., Research Officer, Legislative Research Service

Witnesses:

From the Office of the Assembly:
Mitchinson, T., Director, Information Services Branch

From the Ontario Cable Telecommunications Association:
Moody, R., Executive Director
Weckers, W., Vice-President

From TVOntario:
Allman, C., Manager, Telecommunications Relations

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday, June 24, 1987

The committee met at 4:01 p.m. in room 228.

LEGISLATIVE ASSEMBLY BROADCAST CHANNEL

Mr. Chairman: We have a quorum. I have some other pieces of business I want to bring to your attention later on, but the first order is a delegation we have of eight million people who want to talk to us about ONT PARL and the alphanumeric nonprogramming service. Would you gentlemen like to come forward. For those of you who do not speak this language, this is when you are watching television and they have a channel set aside that has little community notes that there is a dance at the Oxford township hall or whatever. It gives you the date and time on some of them and the weather. It tells you whether it is cold outside and you should wear your little mittens and all that.

Mr. Treleaven: Would it announce a tribute to golden arm, the member for Oshawa (Mr. Breaugh).

Mr. Chairman: Yes, it would.

Mr. Turner: Only if you pay for it.

Mr. Treleaven: Would give up 14 runs in the first inning.

Mr. Chairman: Unfortunately, there would be no picture.

At any rate, we have a request from Rogers Cable in Brantford. This has gone through the process we set up for use of the satellite and the channel that is set aside on most cable systems now, but not Napanee cable, my father tells me, so it has gone through the process. What we have finally is a set of recommendations. I guess the first question is whether you think this is appropriate.

I point out that at least on my cable system, this is what they do on the federal government channel, the federal parliamentary channel, when they are not broadcasting the proceedings. For part of the time, they run a little schedule of what the proceedings will be but they also use that channel for this particular approach. Is there anything either one of you gentlemen wants to bring before us before we go through these recommendations?

Mr. Mitchinson: Very briefly, I should say that what you have before you is really a policy decision that the committee is being asked to make, the bottom line of which really has no regulatory, technical or operational factors involved. We have reviewed it. Catherine Allman from TVOntario is here and they have reviewed it. It comes down essentially to a policy decision relating to the use of the subsidy the Legislature offers to cable operators.

From our perspective as the broadcasting and recording service, certainly with respect to noncommercial use, we have recommended that the committee endorse the concept because we feel it may be an enticement to

encourage cable operators who are not now carrying the legislative broadcast to actually agree to do so.

Once you get into the area of whether it is a commercial as opposed to a noncommercial use, then I think it opens up public policy considerations that become more relevant for consideration by the committee. I think it would be worth while for the committee to take advantage of the views of representatives from the Ontario Cable Telecommunications Association who are here today who can perhaps indicate where the industry is going and what use of alphanumeric or video information services means in both the short run and the long run, because it seems as if the distinction between commercial and noncommercial and today and a couple of years from today may not be that consistent. It would be valuable for the committee to understand that.

Mr. Chairman: Okay, but from our own staff's point of view, there is no problem with this, as I read your recommendation.

Mr. Mitchinson: With the recommendations, no.

Mr. Chairman: Any questions from the committee for these two gentlemen?

Mr. Bossy: I have a question concerning this business of commercial and noncommercial and the splitting of time of that. How much are we using now in noncommercial use, or am I not understanding what you are saying?

Mr. Chairman: Ours is totally noncommercial use now.

Mr. Bossy: But how much of the use that we pay for do we subsidize?

Mr. Chairman: I will let you gentlemen answer.

Mr. Mitchinson: We subsidize on equipment cost to designate a channel for the ONT PARL service. That is a full-time, 24-hour-a-day, seven-days-a-week designation to ONT PARL. Under the terms of the agreement we have with cable operators, if they want to apply to share the use of that channel when we are not broadcasting, there is a process in place that the committee has developed where they come to the committee and make a pitch and the committee decides whether--

Mr. Bossy: This is what you are doing now.

Mr. Mitchinson: This is what is happening right now. This is really, in a sense, the first time we have approached the committee on a channel shared-use basis. We came once before with the Wawatay Native Communications Society for use of our satellite, but this is the first time for the use of the channel.

Mr. Newman: You do not operate 24 hours a day, do you?

Mr. Mitchinson: No, we operate basically from 10 o'clock in the morning until about 11 o'clock at night on all days except for Monday when we do not begin until the House starts at about 1:15 p.m.

Mr. Newman: I know nothing about this because I do not watch you people at all.

Mr. Mitchinson: We watch you.

Mr. Newman: I do not watch because there is enough on television as there is with Detroit across from us, so I can get anything I want, so to speak, on the regular cable.

Mr. Chairman: From our staff's point of view, there is no problem with this. Maybe it would be good to call Mr. Moody now. Mr. Weckers is here. They are both from the Ontario Cable Telecommunications Association and Catherine Allman is here from TVO. Catherine, if you can come up, we will see if you have any comments on this.

Mr. Moody: I will introduce myself, Dick Moody. After 30 years in the broadcasting industry, I have been with the cable association for one year and I am grateful to have Walter Weckers with me whose experience is in reverse. His experience is all in the cable industry as a system operator. Walter, who is vice-president of our association, and we expect him to be next year's president, will have some views that perhaps will enlighten the committee.

As a former broadcaster, I would say that 30 seconds of dead air time on a radio station is abhorrent so that when you look at a cable channel that is not being used, it is greatly enhanced by some service. If a viewer turns on the channel and there is nothing on it, it does not present great perceived value. I think there is an enhancement of the channel to have some service on it, in addition to the legislative coverage.

Mr. Weckers: It is my first appearance before a committee of the Legislature, so if I make any procedural errors, I hope you will forgive me and correct me. As an association, first, we have participated with this committee in establishing the ground rules that have led to the very wide distribution of your service on what we estimate to be about 95 per cent of the cable subscribers who are being covered by our association. I believe from that point of view, in terms of introducing the record, the electronic Hansard, that has been an unqualified success as far as I am concerned.

There are a number of potential pitfalls when we deal with the issue of channel sharing. One of them happens to be that channels are not as abundant as they used to be. A few years ago, 10 to 15 years ago, we barely moved from 12 to a little bit more than 12 channels in a cable system. Today, there are a lot of cable systems that have from 25 to 35 channels. It sounds like a large number, but in recent years there have been a number of services authorized by the Canadian Radio-television and Telecommunications Commission, including discretionary services and new Canadian services and the like, and this summer there is going to be a very intensive hearing in Ottawa that will lead in my estimation to the licensing of yet a number of new services as well.

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In addition, we have participated with with TVO in launching of la chaîne française and there have been a number of other services that have basically put a lot of pressure on channel spectrum. In part, some of this discussion deals with the housekeeping of a cable system to ensure that it is managing the assets, the inventory of channels available to it, so that they are not consumed needlessly and are put to good use. The question deals with partly with that use being commercial or noncommercial.

As a cable operator of course, we are in business. We are not a

noncommercial organization per se. Therefore, some of our members--I do not know how many and who they will be--but it is quite logical to assume that some of our members will wish to have what could be termed commercial type services on time on this channel when your services are not being broadcast.

There may be varying reasons why they may want to do this. Some of them are very small operators and the very fact that they are small has led them to take advantage of your generous offer to fund some of the equipment required to introduce the channel on their systems. The same economic reasons may still be in play for them now to go out into their communties and offer advertising services to local businessmen.

The question then is, is that an unacceptable sharing of territory with the Legislative Assembly and people in a particular town?

In other cases, cable operators have had to fund distribution equipment in addition to that which was made available through the grant. I do not want to go into any technical detail unless you feel there is a need for it, but there have been examples where more sophisticated distribution mechanisms had to be established. I will give one example I am personally familiar with in the area surrounding Barrie, where there is one large transmission tower that distributes, by means of microwave, the signals of the entire cable system to a number of towns around it. The additional costs incurred to establish that microwave system have been borne by the cable company. They went to a greater expense than was made possible by the grant to introduce the service. Sometimes those definitions become a little muddy.

The other thing is that when we look at the definition of alphanumeric services, as Tom was alluding to briefly, they become more and more nondescript in a way. They can go from a noncommercial concept to a commercial concept and there is quite a fluid situation in our industry at this point in time. That fluidity is brought about by some regulatory changes that were enacted almost a year ago. We are still feeling our way through what the long-term impact of these things is going to be.

I would welcome your approval that noncommercial services should find a home next to your service and I would also endorse at this point in time that the potential for commercial services certainly be considered because there will be good and valid reasons why a cable operator would come forward and ask for that permission.

We are fully aware that cable companies have entered into agreements with the Speaker in this matter. They have all sorts of options to change that agreement if it should not suit them. We believe that we can continue a dialogue with your staff to ensure that a viable long-term procedure or policy is established that we can happily live with. Again, I cannot be too specific as to what may come from our own interpretation, our own preferences, but at this point in time we certainly have no difficulty with the recommendation.

Mr. Chairman: Let me try to clear up a couple of things. As I read the recommendations, in a general way we would establish a policy that says: "You cannot use this for commercial purposes. If you want to, you must put a specific proposal in front of this committee and we may or may not approve that." My reading would be that essentially the biggest advantage to a commercial operator would be that we would free up another channel that might not be of great value right now, but in the foreseeable future might well be. Is that your understanding of it, that essentially we are approving noncommercial use of it, that if somebody wants to try something on for size

which might be interpreted as being commercial, we would expect to see a reasonably detailed proposal of that nature before it goes into use and that approval of that commercial use of the channel would be only after this committee approved it? Is that your understanding?

Mr. Weckers: That is my understanding. The agreement we have, or some of us have, with the Speaker is that the other uses for the channel will be--I am not sure of the exact language here--at the discretion more or less--we better get the right language in front of us--"to use the channel designated for the OLTV service for the sole purpose of broadcasting proceedings originating from the OLTV broadcast facility, unless the prior written approval has been received from the Speaker for alternative use, such approval not to be unreasonably withheld."

I suppose what we are saying here is that agreement has already been signed by operators. To the extent they are happy with that, they will submit their proposals and the issue then becomes one of, if there should be a denial, would it be a reasonable denial or an unreasonable one?

Mr. Chairman: Am I correct, Mr. Weckers, in saying the biggest single advantage would be that you may be freeing up another channel that you could use for commercial purposes? You have one channel that is locked into this kind of alphanumeric, whatever it is, now. You would free that one up and put it on ours and you would have a channel that would be free perhaps to bring in another commercial station or to add another service to your cable operation.

Mr. Weckers: That is essentially correct. I should mention that, of course, the grant program covered the incremental cost associated with some of the technical equipment to insert the program on to the channel.

Mr. Chairman: Yes.

Mr. Weckers: In a sense, we have made available, at no cost to the Legislature, the use of what is essentially a television channel. The incremental cost for doing so, in some cases, has been covered and people have taken advantage of the grant. We had something on inventory that we gladly made available--witness the record of success in distributing this service.

What we are saying is that now, having given 100 per cent of the channel, where maybe 40, 50 or 60 per cent of the time there is a use for the Legislature, is it not reasonable now to make sure, as is provided for in the existing agreement, that the other time can be put to good use, whatever that good use is determined to be?

Mr. Chairman: I do not think any of us would have a problem--nobody is here to defend dead air time. It seems to me logical that you would try to put something appropriate on air when we are not broadcasting. I would have some concerns, and I suspect other committee members would too, when you venture into the commercial use. There may be some that would be appropriate. I am not sure what they would be.

Mr. Mancini: Today's ball game.

Mr. Chairman: I for one would be content if you--if the process is that somebody writes up a proposal and brings it to the committee before it goes on air, then we have some measure of control over that. I do not see any

real problem with that. If the process is otherwise, I would sure like to know about it now, or if there is even any question about that.

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Mr. Weckers: There are two points I would like to offer here.

First, I think to a degree the actions of the committee also impact on those operators who have not yet been able to introduce your service because of channel restrictions. Some of our own systems have had difficulty in introducing the service. It may well be that you are asking an operator to free up some time on a channel that already has a service. We would not want it to be a point of contention that a certain type of service all of a sudden becomes undesirable so that the Legislature can be carried.

The other thing, as I mentioned, is that there is a growing evolution or there is so much going on--let us put it that way--in the alphanumeric area of our business that I cannot guarantee that a broadcast news service as it exists today will be exactly the way it will be shown to us two years from now. They have their own contracts with us. We are allowed to do certain things with that. They cannot do certain things with that. It is hard to predict, by definition, what is going to go on.

Mr. Chairman: For me, the bottom line would be that I do not think it is appropriate that this channel be shared with Bugs Bunny reruns. I would not want people to get confused. I want them to know that this is the Legislative Assembly channel and not your Bugs Bunny show. There is reason for them to be confused in that regard from time to time. I do not want to add to that confusion. It seems to me to be reasonable.

Mr. Warner: I have a couple of questions. Like the chairman, I would be very nervous if I thought we were approving something that allows Rogers or anybody else to utilize part of the time for commercial use. I am certainly clear and I think the committee was clear from the outset as to what the intention of providing television coverage of the assembly was all about. It was not our intention to include the opportunity for a commercial operation. I want to make sure that whatever we are agreeing to does not involve a commercial operation.

I certainly understand that the world changes from time to time. It is not unreasonable to expect that in the future, if someone has some kind of creative proposal with respect to commercial or partial commercial use of the space and time, they will come before the committee with that suggestion and we can deal with it at that time. However, I do not think they should be viewed as having a foot in the door in having commercial use of a channel that has been dedicated for TV coverage of the assembly.

Mr. Mitchinson: If I could comment on that, I think what has to be kept in mind is that if a cable operator does not take advantage of the cable subsidy program, then he can do exactly what you do not want him to do with his channel. If he is willing to give back the cable subsidy, then it is controlled by his licence provisions that the commission has approved. The option is always there for a cable operator to say, "It is more important to me to be able to share my use the way I want to than it is for me to have $15,000 worth of public funds." In that case, it is totally outside all of our jurisdictions.

Mr. Warner: That is fine, but I am not putting up the public's money to allow them the opportunity to run commercial operations.

Mr. Mitchinson: Right.

Mr. Warner: As long as that is clear.

Second, I know you have covered it to a certain extent, but when or if we wish to expand the coverage by way of extended House sitting time, extended days, sitting five days instead of four, or if we happen to sit in the evenings or whatever and we want coverage of that, there should be no impedement to having that go on the air.

Mr. Weckers: The agreement we have reads that the use of the equipment that is being covered by the grant is to carry the OLTV service whenever it is broadcast through satelite transmission for as long as the OLTV service is in effect, so that is covered.

Mr. Warner: Does that include a decision by our people here if they want to rerun a particular session or sitting of the assembly? If we had some unusual event and they decided they wanted to rerun the debate that was carried live, wanted to rerun it on the same day, later on in the evening or the next morning or whatever--

Mr. Mitchinson: We do that every day.

Mr. Warner: That is no problem either. You could make a decision today for tomorrow that you were going to do something unusual and it takes priority.

Ms. Allman: As the licensee for the service, if TVOntario was informed by viewers that they suspected that someone in another region served by another cable system was seeing more of the service than they were and there was a suspicion that it had been cut off, it would be our responsibility to report that to the commission, because there is a section in the cable regulations that prevents a curtailment, as they call it, of a signal.

Mr. Warner: Okay, I am satisfied on that.

I have one last area I want to explore. I take it what we are dealing with is really two questions. One is the request from Rogers Cable specifically and the other is the larger question of other cable companies. Is that correct?

Mr. Mitchinson: Yes. The original one was the request from Rogers. Because it seemed like it was one of those requests that was going to be coming from a number of cable operators, we recommended that the committee make a generic decision on noncommercial use.

Mr. Warner: If Rogers or anybody else is interested in running--what do you call this thing?--the alpha--

Mr. Chairman: Alphanumeric.

Mr. Warner: Alpha who?

Mr. Chairman: Alphanumeric.

Mr. Warner: The alphanumeric service, which is print news on the TV, right?

Mr. Chairman: You cannot catch fly balls and you cannot talk either. What use is he?

Mr. Warner: Do not remind me about your pitching performance last night.

Is Rogers either capable of or interested in offering that news service in both English and French?

Mr. Mitchinson: I cannot answer.

Mr. Chairman: It would depend on how we get the news service. If the news service was provided in both languages, they could run it.

Mr. Warner: Oh, they are not originating it.

Mr. Chairman: No. As I understand it, they are taking wire service copy and running it. Is that right?

Mr. Weckers: Yes. The technical consideration is financial because those services are being purchased by the cable company from Broadcast News, plus the fact that it requires a video channel to show the second language service, so is a new channel is required. If you want to do two of them at the same time, you need two television channels to do so.

Mr. Chairman: Mr. Weckers, before Mr. Warner proceeds, could you help me out? I have several channels now on mine where they are doing--I do not know what the technical term is but they are doing overlays on broadcasts that are on there. In other words, you are watching a sports event and a little gong rings or chimes and they will do ball scores from other towns or a couple of channels will run stock market reports across the bottom. In other words, they are doing almost dual programming. You are watching one picture and one program and on top of that they do an overlay. I take it we are protected so that nobody would run overlays on this channel. Is that right?

Mr. Weckers: That is correct. The type of thing you see on your system I presume would be originated by the program provider, by the channel itself. Cable companies are not permitted to alter the programming of any station in any way other than provided for by the CRTC. That provision would include, for example, simultaneous program substitution, a Dallas on an American channel and a Dallas on the Canadian channel. You see the Canadian version with the Canadian commercials on both channels.

Mr. Chairman: So the CRTC regulations would govern that and they would not be able to take the Legislative Assembly proceedings and do an overlay of stock market reports?

Mr. Weckers: No, they would not be allowed to do that.

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Mr. Warner: I want to pursue this a little bit. I would feel much better if we were able to find out technically whether Rogers or anybody else has the capacity to provide on the one channel, on the channel where the assembly is, on the off hours when you are running this news service, the news

that is rolling across the screen in English first and then in French in bringing the news information they wish to provide. You people are the experts in technology, not me, but the principle I am after is that the printed word that comes up on the screen when they give a news event of last night's ball game between two high-powered teams is in both of our official languages. That is what I am after.

Mr. Weckers: I cannot answer for Rogers in this matter. I see a number of potential problems but as to whether it can do it or what its response would be, I do not represent them here.

Mr. Chairman: I guess the best answer would be whether it was Rogers or any other cable company, it would be dependent on some commercial source providing that in the French language. I am not sure there is such a one in Ontario. There obviously would be in Quebec. Technically, I think it would be--

Mr. Mitchinson: Two videos instead of one.

Mr. Weckers: Even if you were to alternate videos, you are probably looking at capital and operating costs that exceed the grant, so people will say, "What the heck, it is not worth it."

Mr. Mancini: I am very interested in this discussion. I thought earlier on that we would somehow get to this point of discussing what we would use with all the spare time that is on the channel. Of course, I do not agree with Mr. Warner that we should go back to the old days when we sat at night or on Fridays. We went through that discussion for quite a long time and I thought there was a firm agreement on that. The question I would like to ask is--I should remember this figure--what does it cost us to run this channel?

Mr. Weckers: What does it cost you in the cable system?

Mr. Mancini: Yes, this one channel that we use as the Ontario parliamentary channel. What are we paying for that air time?

Mr. Weckers: You do not pay anything for air time. The provision is for up to $10,000 for the purchase and installation of a satellite receiving dish.

Mr. Mancini: I am sorry; $10,000.

Mr. Weckers: Up to $10,000 for the purchase and installation of a satellite receiving dish--

Mr. Mancini: I thought I saw those figures.

Mr. Weckers: --and up to $5,000 for the purchase and installation of switching and receiving modulation equipment. That is basically the hardware that is required to capture the signal coming out of space and having it end up on the cable. That is what you are providing funds for. You are not providing funds for the channel itself.

Mr. Mancini: That is the only cost associated with it. As I recall, when we were doing our report, there seemed to be a lot of costs associated with it.

Mr. Weckers: There are more costs associated. In some systems, for

example, one channel would represent approximately five per cent of the total capacity. A system could have cost $2 million to build, so you could say there was some capital investment in a channel that may be $100,000 or $200,000, depending on the size of the system. You get very involved now in the economics of a cable system. The grant program did not address that. The grant program basically was designed, as I interpret it and as our company has used it, to fund the incremental out-of-pocket expenses to make it possible to show the programming of the assembly.

Mr. Mancini: Have we spent any money? From what you told me, we spent $10,000 and then $5,000 and now you are telling me we expect some more.

Mr. Turner: I think there is a misunderstanding. I think Mr. Mancini was asking the question of what it is costing now to provide the service that we now enjoy.

Mr. Weckers: That is the creation of the program, the transmission.

Mr. Mitchinson: Our budget for the television system?

Mr. Mancini: Yes, please.

Mr. Mitchinson: On the distribution side of what we pay as a tariff fee to TVOntario, which in turn flows that through to Telesat, I believe it is $1.2 or $1.3 million for leasing costs for the transponder. We pay for phone line connections between here and TVO. Is that the sort of thing you want?

Mr. Mancini: Now we are getting to the facts. So we pay $1.3 million to TVOntario?

Mr. Mitchinson: If you want the exact figures, I will have to get them.

Mr. Mancini: No, I am willing to work with round figures because I am kind of leading up to some comments I would like to make.

Ms. Allman: It does not actually stay at TVOntario. It flows to Telesat, the owner of the satellite system that broadcasts it.

Mr. Mancini: Who would that be?

Ms. Allman: Telesat?

Mr. Mancini: Yes.

Ms. Allman: It is owned by the telecom company in a pool with some federal funding.

Mr. Mitchinson: They own the satellite, so if we are going to get to the satellite that is the leasing charge for getting us there.

Mr. Mancini: Anyway, I guess without argument, we are at the stage where we can say it is costing us $1.3 million a year just to be on air.

Mr. Mitchinson: Without argument.

Mr. Mancini: Let us stop there for a minute then. While I understand

my colleague's concerns about not wanting to change the nature of the station and about wanting it to be associated always firstly with the proceedings of the Ontario Legislature, I think we should also as legislators, if we have the time, at least consider the possibility of trying to make up part of that $1.3 million.

I do not think that is unreasonable if done under the proper conditions, with members reviewing what those conditions are, may or may not be. I understand and respect the view of my colleague the member for Scarborough-Ellesmere (Mr. Warner). He probably would not want to earn a penny on that station. But I firmly believe that it may be possible to do it in the right way.

At least, let me say this: I would be more than willing, as has already been stated in a roundabout way by our chairman, as a committee to sit down and look at serious proposals that may be a revenue maker, may offset the tremendous cost we are incurring, may fit into the type of station we have and may not take away from the parliamentary channel, but may enhance it.

I think there are a lot of intelligent people out there, a lot of intelligent entrepreneurs. As one of my colleagues said earlier, things are changing every day. There may be a demand some time, preferably in the near future, if not in the long term, where someone will be able to sit down before this committee and say, "I have something for you that will help offset your costs and will fit into your program."

I do not have any ideological concerns about this. I am willing to look at it. If it sounds good, I am willing to recommend it to my colleagues. If we agree in the majority, then we can proceed. If the House agrees, then we can proceed. I do not want to leave the impression here today or on the record in Hansard that the only thing we would consider is the--

Mr. Chairman: The second recommendation provides for a method of approving commercial approaches.

Mr. Mancini: There did not seem to be any positive forces speaking out.

Mr. Bossy: To get this very clear, and I think this is what we want to understand, there is the legislative use, the noncommercial use that is nonlegislative and then the commercial use. We are talking about three areas of possibility. Am I understanding this possibility to exist? Initially, you are asking for approval for noncommercial use in addition to the regular legislative use of that channel, and then at a time in probably the not too distant future requesting us to look at the commercial use.

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Mr. Chairman: The second recommendation before the committee provides a method whereby someone with a proposal for commercial use of a channel could have that proposal considered by the committee and approved.

Mr. Bossy: Could you illustrate to me what types of noncommercial use you may make of it, just to have an idea of those that are not commercial.

Mr. Moody: I went through a few systems just to acquaint myself with use of the Ontario legislative channel. There are a number of companies that have not taken the subsidy. I can think of one example of a company that did

not take advantage of the dish--the company had a dish--but it took advantage of the $15,000--I think there were three systems involved for the switching equipment and so on. I think they spent $30,000, including microwave, to bring the broadcasts to small communities they serve. They got a $15,000 subsidy and they spent $30,000 to provide the service.

There are a number of other systems that took no subsidy at all and are carrying these broadcasts. I must hasten to say on behalf of the 135 systems that comprise our association that we are, as an association and as individual members, very grateful for the government's assistance in this program. We do not wish to appear truculent or ungracious. I think we are drawing to the committee's attention that there are a number of cable companies carrying the broadcast in its entirety that right now are putting other things on that channel.

Some of them are putting on news; some are putting on flight and departure information; some are putting on barker channel; some are putting on local political news; some are putting on public service announcements. I think the committee should be aware that those companies that took no subsidy right now are putting other material on the channel.

Mr. Mancini: Is that in contravention?

Mr. Moody: I think the matter under discussion is that the companies that did take a subsidy should not, in the committee's view, carry anything that is remotely identified with commercialism. In a market where you have two or three systems all operating, you may have two that did not take a subsidy and are doing what they wish and a third company that did take a subsidy and must follow the rules of the committee, and rightly so. They signed the document.

I think what we are asking is whether we could identify an inappropriate commerical service. That might be a classified advertising system in New Liskeard where there is no newspaper. There may be a radio station in the next town. This cable company has a little classified ad service. People phone up and for a dollar they can sell a home, a rake or a roll away bed. It may be the wish of that small system that it would like to put on classified ads.

I do not think that takes away from the distinction and what you wish to generate for Ontario legislative programming. I do not think cable operators are so irresponsible as to destroy the integrity of that channel. I guess I speak more as a broadcaster than a cable operator, but it is just dead air time. It is just abhorrent and an anathema to broadcasters.

Mr. Bossy: I understand. Just to follow up, the thing that I am mainly concerned with is that if we broaden the use of that channel--I tend to agree that we should because dead air time, as you say, diminishes the use of and exposure of the legislative channel--if we extend it and approve these extensions to other uses, is there any area where we could lose control over our legislative broadcasting because of pressures of all other incomes that could be derived from that channel that may tend to be more attractive?

Mr. Chairman: I would like to intervene for a minute here just to clarify this point. We do not own the channel.

Mr. Bossy: No.

Mr. Chairman: We put out a signal and we control that. We control

when the signal goes out but if, as Mr. Moody points out, a cable company has not entered into the subsidy program, it takes that signal as it would any other signal and fits it in as it sees fit. We have no control over that.

Mr. Mancini: Can I ask you a question then? For some reason, I remember that the only reason we got this on-air to begin with was that we made application to the CRTC through TVOntario--

Mr. Chairman: To send out a signal.

Mr. Mancini: --strictly for the Legislature. While we may be technically right when we say we do not own the channel, I think in theory the only reason the channel is there is because of the action we took and concurrence by the CRTC. Saying we do not own the channel leaves a wrong impression, if you do not mind.

Mr. Chairman: But we do not.

Ms. Allman: If I could speak both to that point and a previous point that the member spoke to about the commercial nature and whether that could be possible or could be entertained, there is in fact a differentiation, as you say, Mr. Chairman, between the service itself and the channel, a licence that TV Ontario holds for the legislative services; in fact, for this service that you control.

In making that application, we also applied for a noncommercial service. Should the members at any time entertain thoughts of it becoming a commercial service, as I interpret it, to offset the cost of the one million plus it takes to provide this to the citizens of Ontario, that would take a reapplication to the CRTC. There is not only a differentiation between the service and the channel, but also between the commercial nature you suggested of that service and the commercial nature of services using the channel after the service has gone off-air.

Mr. Chairman: Are there any further questions from the committee?

Mr. Turner: It is just not a matter of this committee approving it.

Mr. Chairman: No, we should be clear on that. We have very specific approvals for putting out a signal. If you wanted to change that in some way, you would have to go back, just like CFTO or any other television station does, to get approval to run that as a commercial enterprise.

Mr. Moody: If I could just note again and reinforce, I think the responsible attitude taken by cable operators throughout Ontario--I think Tom Mitchinson has figures and I am doing this from memory. I think 65 systems have taken advantage of the subsidy. Something like 26 more are in the process of application. We have 135 systems in Ontario representing 2.4 million subscribers and I think already you are being exposed to over two million of them.

Many of the systems that have not taken the subsidy feel responsible, are carrying these broadcasts in their entirety and have created channels to do so. I hope we appear before you as a responsible industry that believes in the service you are providing. With Tom Mitchinson's help, we have notified MPPs of the systems in Ontario which are carrying these broadcasts by channel number. We are greatful to have a response from a number of MPPs who say that

in their own regions they are finding a greater awareness of these broadcasts in their localities.

I am trying to underscore, first of all, that we would be grateful for the committee's decision today to permit a sharing of the channel with noncommercial programming. We also hope the committee will not unnecessarily withhold its approval in areas where we make an approach to provide some form of commercial enterprise, provided the committee can see that it is a worthy enterprise. I suppose it would be fair to say that we would be grateful if you would decide that we may use the channel as we see fit, believing us to be responsible industry people. That may be too much to hope for at today's meeting, but we would be grateful for your approval of what is on the table today.

Mr. Warner: I do not need this today, but it would be really helpful if I had a definition of what you mean by a commerical use of the channel.

Mr. Chairman: Something for which they make money. They charge for the services. They are talking now about approval to run something for which the cable operator receives no revenue.

Mr. Warner: That is right. Maybe I am wrong, but it seems to me that on the cable channel that has been dedicated for coverage of this assembly, the cable operator, even with our approval, would not be free to meet Remo's vision of offering used cars or Coca-Cola.

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Mr. Chairman: We could not sell commercial space under the licences we now have.

Mr. Mancini: I think the member for Scarborough-Ellesmere is getting carried away.

Mr. Warner: You would require approval of the CRTC.

Mr. Chairman: We would require.

Mr. Warner: We would.

Mr. Chairman: Yes. We do not have a licence or approvals to put out any signal of a commercial nature at all. We could not do that without putting in an application.

Mr. Warner: This is what I am finding a bit confusing. You used New Liskeard as an example. The information you were talking about could be provided either with or without fee. What you are telling me then is that the only distinction is the fee and not the nature of the material.

Mr. Weckers: What you are getting into here is just the type of changes that are occurring and the difficulty we will have in having one definition that fits all. It is a more dynamic industry than it was a year ago. To a large degree, I think this applies to small systems, not to the very large systems that would not have a difficulty with $5,000 or $10,000. You have a situation here--we have a system, for example, in Whitney, Ontario, where we have all of 250 homes and 180 subscribers. If you start looking at a cost of $15,000 for systems like that, where the people are already paying $20 a month just to get regular cable service, it no longer becomes very practical

to have yet another $10,000 or $15,000 charge on top of that to introduce a new channel when there is a channel available 10 or 15 hours of the day.

What we are saying is that some of our members, not all of our members, will come forward and say: "We would like, and we think there is a very good use, to basically make more effective use of this piece of hardware that has been funded thanks to the generosity of the Speaker. We do not believe that is inconsistent because the first reason we took the grant was economic conditions. We would like to make sure this channel is put to greater and better use, consistent with the needs of the community. That is also an economic reason." They are not incompatible from that point of view.

The question at this point in time--back to the agreement that says you will not unreasonably withhold your agreement--is one of judgement, to say this is detrimental to the legislative service or it is not. You may have a grey area at some point in time, but essentially this is what we are talking about.

There will be very ingenious proposals, I am sure, coming forward from the industry. I cannot think of them all but there will be very--

Mr. Mancini: All the used car salesmen, according to the opinion of Mr. Warner.

Mr. Treleaven: Keep in mind that some of us are country boys who cannot get cable even if we have time to watch it and are therefore totally ignorant of what cable television is all about. In fact, we are just getting the candle in Oxford.

Mr. Warner: You are just learning about the telephone.

Mr. Treleaven: Right.

You gave the example of New Liskeard where they are having a marketplace type of show. This is the first question. Whether or not we give approval for the use of other cable systems using it, will New Liskeard change? Will New Liskeard carry on whether or not we give approval? That is question number one.

Mr. Moody: I think there is the danger of using any example by name. I should have said town X.

Mr. Treleaven: Town X is fine.

Mr. Moody: I do not believe New Liskeard at present--

Mr. Chairman: Let us make this distinction: The cable system that has applied for and used our subsidy program is affected by this policy. A cable system that has not applied for nor used the subsidy in unaffected by this policy.

Mr. Turner: They can carry whatever they--

Mr. Chairman: They can carry whatever they wish.

Mr. Treleaven: Second, can I go back to the basics? We do not have ownership or proprietary rights to the cable to that channel. We do not own

it. We have a quota, so to speak. We purchase air time, so to speak. We applied to the CRTC. They gave us a quota and they said--

Mr. Chairman: No, we have--

Mr. Treleaven: What do we own?

Mr. Chairman: We have a licence to produce a noncommercial service. The CRTC has agreed that we have approvals to put up a signal that is noncommercial in nature.

Mr. Treleaven: Right.

Mr. Chairman: Then the second part of the process kicks in where cable distributors have licences to receive those signals and put them on air.

Mr. Mitchinson: We rent a transponder on a satellite 24 hours a day, seven days a week.

Mr. Treleaven: Do we not have exclusive use of that channel?

Mr. Mitchinson: Of that transponder, yes.

Mr. Chairman: But not the channel.

Mr. Mitchinson: It is up to the cable company to take it from the transponder and put it to use.

Mr. Treleaven: We are getting some distinction between the transponder we have exclusive control over; we do not have it over the cable.

Mr. Chairman: That is right.

Mr. Treleaven: Therefore, you are asking us for dual use of the transponder.

Mr. Chairman: No.

Mr. Treleaven: Where is that proprietory right to say yes or no to the use of the channel?

Mr. Weckers: It is by means of an agreement.

Mr. Chairman: The agreement we enter into under the subsidy program is the only cable operator over which we have any real control. The control is that they have entered into an agreement. We gave them some money to buy equipment that allows them to pick up our signal. If they have used that, we can impose these conditions on them. If they have not, we cannot.

Mr. Mancini: We give them $15,000 a year?

Mr. Chairman: No, it is a one-time grant.

Ms. Allman: Let us look at another service, any service. Say there was a children's service licensed that only cared to operate 14 hours a day and this children's service used a cable channel and went off air after its 14 hours. Under the cable regulations set by the CRTC, after the point at which that children's service disappears, cable can run certain services, among them

nonprogramming services that are defined as services without moving pictures and with sound, but in most cases alphanumeric or letters. Therefore, those services are unregulated by the CRTC and can be either noncommercial or commercial. As you have just said, the proprietory right only comes through the agreements you have made through the loans. Other services do not have this say because they only have licences for a certain amount of time.

Mr. Treleaven: Mr. Chairman, would you then speak slowly to me and I will watch your lips. What are we being asked for?

Mr. Chairman: It is real hard without cartoons. You are being asked to deal with the recommendations that are on these pieces of paper. They deal with those cable operators that have entered into what we are calling our subsidy program. Where the cable operator has entered into that agreement, we are now saying that under these conditions they may run this alphanumeric broadcasting. They may run it if it is noncommercial by means of the first recommendation. If the proposal were to be a commercial one, under the second recommendation we are saying: "Put together that proposal and bring it before the committee. If we approve it, you can do it." If we do not approve it, we would basically be expected to give him some reasonable grounds for not approving it.

Mr. Mancini: I have one more question. Have we been told yet how many services have accepted the grants and how many have not and are showing it anyway?

Mr. Moody: Sixty-five have and 26 are pending.

Mr. Mancini: Out of a total of what?

Mr. Moody: In our association, there are 135 systems that belong to OCTA. There are some small cable companies that do not belong to our association. They do not represent a great number of subscribers, perhaps in total, 100,000 subscribers.

Mr. Mancini: So we are getting close to 70 per cent or 75 per cent of everybody participating with the grant?

Mr. Moody: There are a number of systems carrying it without the grant. You cannot get a grip on who is watching or who has the potential to see it simply by those who have asked for or are in the process of getting the subsidy. Many systems have not taken the subsidy and are carrying the programs.

Mr. Mancini: You said 65 have accepted the grant and 26 more I believe are---

Mr. Moody: Is 65 right, Tom?

Mr. Mitchinson: Yes. It is one of those things. They keep coming in all the time. Approximately 80 systems have applied for the grant.

Mr. Mancini: Out of approximately 135.

Mr. Mitchinson: It is more than that, since there are more that are not associated with your company.

Mr. Mancini: For the sake of argument then, we are at the point where approximately 50 per cent of the cable companies are carrying ous show.

Mr. Mitchinson: With subsidy.

Mr. Mancini: With subsidy, which means they cannot show anything else until we get approval for this nonprogramming.

Mr. Mitchinson: That is right.

Mr. Mancini: I guess the idea is that as time goes by, more and more will come on board. The decision we make today will become more important as more of these cable companies--

Mr. Weckers: The decision wil either encourage or discourage; let us put it that way.

Mr. Mancini: Say that again?

Mr. Weckers: Depending on the decision in favour or against the recommendation, it will discourage or encourage cable operators to participate in the grant program and extend the service.

1700

Mr. Bossy: A further question: Based on this year, those not participating that are carrying the Legislative Assembly have total jurisdiction; in other words, whether to carry it live or to do as they want.

Mr. Moody: I think those systems, as I indicated earlier, are responsible. They are carrying the program as fed.

Mr. Mitchinson: I believe there are CRTC regulations that govern what they can do to a signal. Catherine would be the right one to explain that.

Mr. Bossy: Further to that, and you might be able to pick up on that, can you see that there could be an advantage to being a nonparticipating cable distributor?

Mr. Weckers: In some cases, it could be an advantage.

Mr. Bossy: With the Legislature being so popular and everybody wanting to watch it, it would be a tool to enhance whatever they are showing. This would be in addition to, but an attraction to--why should we subsidize if there could be an advantage?

Mr. Weckers: Suppose someone were to come forward under the terms of the existing agreement and say: "I have to have your approval to do the following because I have already made a contract with you that I will come and ask for your permission and you will be reasonable and give it to me. If you do not give it to me, you are going to be able to explain it to me." If you were to say, "You cannot do what you are proposing to do," that individual would have to make up his mind: "Am I going to give the grant back? Is it worth giving the grant back and then I can do what I want? Is it worth pursuing it and then I will live with whatever agreement is struck?" That is sort of the essence of what may happen in the future.

Of course, what we hope to do is--in a number of cases, a number of our

members have not and will not come for the grant because they do not need the grant, and that is great. You do not need to give your money to anyone who does not come and ask for it.

Second, there are people, typically in smaller systems in areas away from Metro Toronto, in the far north and so forth, that have availed themselves of the grant and that may have economic reasons to say, "I would like to have a commercial service." I presume you are not talking much about noncommercial service. "I would like to have an opportunity to do so and I have a reasonable expectation this committee will deal fairly with such a request." Off we go. Nothing is lost. Everything is gained.

There may be some borderline cases where an operator of a cable system may say: "I really do not want to that. I am going to return the money for the grant and I will do my own thing. Thank you very much." I do not control what will happen in each case, but those would be the three scenarios that will be available.

Mr. Chairman: Any other questions?

Mr. Warner moves the recommendations.

Any debate on the recommendations? Those in favour? Any opposed?

Motion agreed to.

ASSEMBLY-TO-ASSEMBLY ASSISTANCE

Mr. Chairman: I have a request from Richard Johnston to deal with a matter that is not on our agenda. This was also mentioned to me by a couple of people from the Board of Internal Economy. I suppose if you want to, I would have to listen to any objections that we were not given notice on this, but this is perhaps the last meeting before we adjourn. It might facilitate matters and I do not see any harm in dealing with it.

Let me put the problem to you first and then you can give me some direction. As I understand it, a request went to the Board of Internal Economy for some financial assistance. At the board meeting, there appeared to be some confusion as to whether, in fact, the board could deal with the matter. A couple of members asked me to put this before the committee. Then Mr. Johnston approached me and said that he would like to attend and put it before the committee.

It is really a matter of timing. You can deal with it today or you can stall it for a little while and deal with it on a subsequent date, but it does strike me we could give Richard at least the opportunity to state his case today. Then you can decide whether or not you want to deal with it.

Mr. R. F. Johnston: That is all I would really like, the indulgence of putting this proposition to you. Then you can decide whether or not you would like to or feel up to dealing with it today or would like to defer it.

Essentially, a group of us, as you know, went to Nicaragua. When we were there the National Assembly made a couple of requests of us for assembly-to-assembly assistance. One was just for equipment, typewriters, things like that, that would be given to the parties within the assembly.

There are seven parties in the assembly, ranging from very far left to quite far right, with the governing Sandinistas having a majority.

They have never had a democracy before and there is very little money around. There is no equipment for the opposition parties, as we have, in terms of being able to get your word out. The idea was to be able to get typewriters and things to them for that.

The second request was to have some of their senior bureaucrats and a few deputies from the House maybe come to Ontario to see how our system works and, in particular, to see how our committee system works, because they have never had that, and to learn English at the same time.

I came back with these requests and took them to the Board of Internal Economy and the board, as Mike rightly says, may or may not decide on the merits of these projects at some point in the future. They felt that, first, they were not sure they had the authority to deal with this kind of request, and second, some members wondered whether they should deal with this without having some sort of policy within which they would look at these kinds of requests.

Basically, what I would like to do with you, as members of the standing committee on the Legislative Assembly, in trying to assist me, is not to deal with the merits of the case at all--I put that information down so you can see what the kind of request is--but rather to deal with the notion as to whether you think the board should, in principle, be involved in this kind of request from individual members or from members of travelling committees or whatever it might be.

As you see, in the third paragraph of my letter to your chairman, I am basically--I will just read it out to you: "I therefore turn to you, as a committee, to affirm a position that would recommend that the Board of Internal Economy establish an annual fund for assembly-to-assembly assistance in burgeoning third world democracies, both within and outside the Commonwealth. The purpose of the assistance should be to aid the progress of pluralism in the assembly and should only be extended to assemblies in jurisdictions which generally meet the human rights expectations of Amnesty International."

I do not know if this will help the board to come to a conclusion about my specific request or not. I think it might if you were in agreement that this is a role we might well want to play as an established democracy, that is, assist assemblies like those in Nicaragua or El Salvador or Haiti--there are a number of places where there are elected assemblies but very little experience with democracy--to learn how we operate; also, to be able to provide them physical assistance like typewriters or desks and that kind of thing because these are very poor countries. If you think that is an appropriate thing to do, I thought some kind of statement to the board, a motion passed here and sent to the board saying that you think that would be appropriate, would help it at least to decide whether it can look at the merits of the suggestion that the six members who went have brought back.

That is basically what I would like you to consider, either, as you say, Mr. Chairman, now or at some other date.

Mr. Chairman: Before we get to the gist of the argument, I tried to do a little bit of research on this. We do not have much in the way of precedent. The only thing I could find is that through the Commonwealth

Parliamentary Association, we have a fund and we make a contribution to what is a kind of general fund for the Commonwealth Parliamentary Association. Essentially, those moneys are almost like an annual levy, I guess, and through those we assist other members of the Commonwealth to host conferences and to have their delegates travel to conferences. We do a bit of building. We have, I think, provided some moneys through that same fund to refurbish, restaff and re-equip the secretariat of the Commonwealth Parliamentary Association.

That is about as close as I could find to anything we have done. At Westminster, for a long while--I think it is still the practice--they have done this kind of thing with new Commonwealth countries. In other words, it used to be--as a matter of fact, a practice we should get into here--they used to make it a point, whenever there was a new Commonwealth Parliamentary Association started in some nation, that a delegation always went from Westminster and provided them with furniture, a mace or something of that nature. That is the precedent I could find.

1710

To offer some guidance to you, the split that would fall here is that it is not our business to provide funding for this. That is clearly the role of the board. It would be our business to suggest that it would be appropriate for the board to consider a request for funding. I guess the first question is, do you want to deal with this now or at a subsequent meeting?

Mr. Bossy: Subsequent meeting, but I would like to ask a question. I have not been there so I have no idea. Trying to read through newspapers and everything, as far as the National Assembly is concerned, you say with all the different parties that exist there. Do you think that in the distribution of this equipment to the different parties, they would have more control than existed here in this assembly before? When I arrived here, there was not a very even distribution of equipment in this assembly. I am going to tell you, I was very disappointed. They are more advanced over there than when I--

Mr. Warner: Than the Tories were here.

Mr. Bossy: --arrived two years ago. I am going to let you answer that. You have been here longer than I have.

Mr. R. F. Johnston: I do not know if it is any more equal. I will just relate to you a conversation I had with one member of one of the very far left parties in the assembly, which has two members. He was bemoaning the fact that he could not get private member's legislation through. He would start off with it and it just would disappear. I said, "By God, I can commiserate with that."

Mr. Turner: Who can't?

Mr. R. F. Johnston: We started talking about this and I said, "By the way, how did you guys do in the last election?" He said, "We got one per cent of the vote." They had two seats because they have proportional representation. So in a sense, just the fact of being there gives one a sort of a different viewpoint than we have here.

In the assembly itself, they virtually have no offices for members at this stage at all. The president of the assembly, which is slightly different from our Speaker, has more power than we have and has an office staff, some of whom are the ones, the lawyers, who are being suggested come in that letter at

the end of the package, but the regular members have very little at all. There are a handful of typewriters around the whole National Assembly as an example.

Mr. Bossy: I want to ask a further question. Is there an elected speaker or an appointed speaker?

Mr. R. F. Johnston: Elected by the assembly.

Mr. Bossy: From one of the--

Mr. R. F. Johnston: From among them, yes, from one of the elected deputies.

Mr. Chairman: What is the pleasure of the committee? Do you want to table this matter and deal with it at a subsequent meeting?

Mr. Turner: I think we should discuss it in caucus, if that is agreeable with everybody?

Mr. Warner: To tell you the truth, I think it is something we could actually deal with right away in that the board has the right to approve funds. We do not. All that is being asked is that we ask them to establish a policy. They do not have a policy. Surely, it is appropriate that they should have a policy so that members know, in advance, whether it is worth their while to approach the board on what Richard has done, or any other member who comes up with an idea. They do not have a policy right now. They have never had one. Surely, it makes sense to have one. That is the only request being made. To me, that is a pretty simple matter to deal with. Then let the board worry about it.

Mr. Mancini: Can I ask Richard, if he gets the chance, to appear before the board? I think that is very important. I think we are advancing. The reason I bring it up is because in the past I know that members were denied the opportunity to go before the board with special problems or considerations. I know personally that I was denied the chance to go before the board. I am happy that at least the board is allowing members to do that when it was not done in the past.

Mr. R. F. Johnston: I have been able to go and I actually spent a few minutes with them arguing the merits of the case. They tabled their discussion of that because of their uncertainty as to whether they had the right to deal with this kind of policy. As the chairman says, there are not many precedents. The library has given some assistance on the request of a past Speaker from this House, which can be seen as a board decision if you want. Ministers have done things. For instance, recently the Minister of the Environment (Mr. Bradley) has actually, as I understand it, given money to Costa Rica, a neighbouring country of Nicaragua, to assist it with maintaining a rain forest. That kind of assistance has gone on.

However, the assembly-to-assembly notion is what I am really interested in here, the idea that we as an established democracy should be doing what we can to help foster demcocracies as they develop, within the two controls that I think need to be put on this, that it is pluralistic and not a one-party-state democracy concept and that it not is a nation that has bad human rights violations. With those two caveats, I think that is a very important role for established democracies to play.

From my perspective, I really hope we could have these. The exchange

program that is at the back of this thing started this fall. That clearly cannot happen just in terms of board meetings and that kind of thing, even if it decided it really wanted to get at this issue quickly. I do not mind the idea that this go back to caucuses for discussion of it, because it is not the merits of my particular point that I am pointing to the board that I am arguing for at this stage with you. I am arguing, do you think your caucuses would agree that, as an assembly, we should try to do assembly-to-assembly work of this sort outside the regular Commonwealth Parliamentary Association approaches we have at this stage?

I would really like to see us do that. That opens up a whole concept of how you rationally do that. The board would obviously have to come up with those decisions. Individual requests, like the one I have put to them, will have to be put in that context. If they are not going to deal with it because they do not think they have a context, then we are all sort of stuck.

Mr. Bossy: I would like to move that we table this.

Mr. Chairman: Oh, just--

Mr. Bossy: I can put a motion on the floor and then you can do all you want.

Mr. Chairman: Mr. Bossy moves that we table this document so that we can go back to the respective caucuses for further discussion and that we bring it back at a future date convenient to the chairman.

Could I just beg your indulgence a bit here? I certainly do not have any objection to its going to the caucuses. When the committee deals with it, it would be most likely to do it by means of a report to the assembly or to the board. I would like to have a little approval to do a bit of background work for it. I am not anxious, frankly, that you take it to the caucuses unless you have some kind of context. I think it would be useful when you have these discussions in caucus to have a little of the reference material that may have been gathered for the board by the library, maybe to have a little more information about CPA and what it does, so that you have it in context and can put it to your caucuses as to whether you would like to do that.

I have no objection to this concept. This committee, among other things it has done, has tried to establish contacts with other duly elected assemblies in various parts of North America lately. I do not have any problem with that. I do agree that I would like to see this done in the way of a policy paper or a position paper. I suggest that you might wait to take it to your caucuses until we can get you that kind of stuff. I do not have any objection, naturally, to tabling it until we do that. Do I have your concurrence to try to put together a piece of paper?

Mr. Mancini: I have a problem with that and maybe you can clear it up right away. Usually this committee does work that is referred to it by the assembly.

Mr. Chairman: Or by any member.

Mr. Mancini: Okay. Now we are getting to the question I want to ask. I am trying to remember some past cases, but none comes to mind now. Is the work we undertake in the report type of form we are talking about--we are going to get into some detail and some professionalism on this and maybe even

have the report sent to the House. I want to make sure exactly what we are doing. Does that basically mean that any member of the assembly could make an appointment to appear before our committee and then ask us to undertake some type of report?

I am not objecting to doing the work we are talking about and I have some of my own questions that I hope we will be able to have answered. Say, for example, I decide to switch committees and I go on to another committee, but next week I come back and say to the standing committee on the Legislative Assembly that I have this concern, and I explain it all. Everybody says it is something that is interesting. Is that a proper way for the committee to proceed, to say, "Fine, we are going to do a report," or do we open ourselves up to doing reports for any member any time they feel like it?

1720

Mr. Chairman: Let me put it this way: As long as it is within the jurisdiction, the terms of reference set by the House when it established this committee, any member of the assembly in my view has always had the right to attend before us and to be heard. Whether you want to do anything about what he says is your business, but he or she has the right to appear before us and state his or her case. If you want to listen to him and say, "You are nuts, goodbye," that is the committee's business. If the committee feels it is appropriate to respond by sending a motion somewhere, to the Board of Internal Economy or writing a report to the House or taking it to the caucuses, that is fine.

At this stage, I am not suggesting it would be appropriate to begin writing a major report, but I would like John, for example, to gather up those pieces of paper the Library has already done for the Board of Internal Economy and share that information with us. I think we should have the information that is there.

Mr. Mancini: I would like the clerk to tell us when we have ever in the past--even if it is just the gathering of paper, because if it is the gathering of paper and it is put together in a form that we are used to seeing, then it will be a paper in a binder and it will have the Legislative Assembly committee name on it and it will have all the authority that goes with it. I would like to know from the clerk if he has ever done this before on a request from a single member.

Clerk of the Committee: Yes, there have been instances--I cannot name specific members--when we have been doing procedural reviews where members have come before the committee and asked for assistance.

Mr. Mancini: I understand the procedural--

Mr. Chairman: Remo, let me point out to you that almost every week we do something of this nature. Any time any member of this committee says, "I want something referred to the members' services subcommittee," we do that. If somebody says, "I want a procedural point clarified," we do that. The practice is that any member of the House who has a problem has a right to present it to this committee. It is the committee's decision on how it handles that. We put it to a subcommittee often before we are sure and we gather up information. If somebody wants to know how members are paid in other assemblies, we do that. If they want to know how civil servants get car allowances, we do that. As long as it is within our terms of reference, the committee can deal with it.

Mr. Mancini: I agree that those things you mentioned have been done in the past, but I hope you will agree with me that those things are not comparable to the proposal put forward today.

Mr. Chairman: Let me read the standing orders, which may help you a bit. "Standing Committee on the Legislative Assembly which is empowered to review on its own initiative or at the request of the Speaker or the direction of the House and to report to the House its observations, opinions and recommendations on the standing orders of the House and the procedures in the House and its committees; to advise the Speaker and the Board of Internal Economy, and to report to the House its observations, opinions and recommendations on the administration of the House and the provision of services and facilities to members; and to act as an advisory body to the Speaker and the House on the television broadcast system and to conduct reviews, at least on an annual basis, of the television of the legislative proceedings and of the guidelines established by the House with respect to the television broadcast system." It is fairly clear.

Mr. Mancini: This does not fall under those guidelines.

Mr. Chairman: Yes, it does.

Mr. Mancini: Let me finish.

Mr. Chairman: It is under the administration of the House.

Mr. Mancini: Let me finish. My friend the member for Scarborough West (Mr. R. F. Johnston) will wait before he groans. What falls under those regulations is exactly what Mr. Johnston said to us earlier. He said to figure out a format for us so that we can fit things like this proposal into it. Instead of having our staff prepare a document that would specifically relate to this, I would rather have the staff and the clerk prepare some type of framework, for example, that would deal with the whole thing.

Mr. Chairman: You want to go further.

Mr. Mancini: No, it may be further in your view. I am not so sure it is further in my view. In my view, it would be the first thing that should be done. I think what Mr. Johnston said made sense. He went to the board and they said, "It is a great idea or it is a lousy idea, but it does not matter because we cannot deal with it anyway." He came here today and he said to us: "I am not concerned about what you think are the merits of the program. All I am concerned about is whether or not you would look into recommending the establishment of a formula or policy where when I or others have something such as this, we can then see if it fits in the policy or not."

By putting together all the information, specifically on Mr. Johnston's request, I think gives the wrong impression. That is my view. If that is not the view of the committee, then I am willing to listen to all others and vote accordingly.

Mr. Chairman: I want to clarify this. I simply wanted to have whatever information the board had in your hands.

Mr. Mancini: That is not necessary.

Mr. Chairman: I want it.

Mr. Turner: If you want to make a decision--

Mr. R. F. Johnston: If I understand what the chairman was saying, and maybe this is where the misunderstanding is, it is not on the merits of the case but on whether there are any known parameters at the moment out there for policy on the general question. I am not sure that they will find much more than the chairman has already told you and a few anecdotes about what various ministers have done in the past and what ad hoc arrangements have been done in the past. That will give you an idea of the range, of how it has been dealt with. That is the general matter as to whether any assembly work of this kind can be countenanced; that is all.

Mr. Bossy: A question to Mr. Johnston: Concerning your meeting with the Board of Internal Economy, when you were there, did I understand that it decided that it did not know whether it could deal with that because there was really no policy?

Mr. R. F. Johnston: Right.

Mr. Bossy: Did they at any time recommend or did you suggest to the Board of Internal Economy that it send to the committee a reference so that we could deal with that, look into that?

Mr. R. F. Johnston: The board does not work that way.

Mr. Bossy: I am just looking at the procedure, Richard.

Mr. Chairman: I think what is happening here is what has happened to us as a committee on a couple of occasions. The thing does not quite fit together just yet as to the relationship between the Board of Internal Economy and this committee. That is the problem here. When we were making recommendations on a number of items--for example, I had my chat with the Speaker about security matters. I pointed out to him that it did not make much sense to me to use the traditional approach of tabling a report in the Legislature on security of this building. He agreed that we have to find some other way to handle that. Even though he wrote me and said that our sending recommendations directly to the board was being questioned as to whether it was appropriate, he also agreed it would be inappropriate for us to do a security report and table that as a public document in the Legislature.

We have made this much progress. We have agreed that the system does not quite fit together just yet and that we will have to review the relationship between this committee and the Board of Internal Economy and find ways we can talk to one another without the Board of Internal Economy tabling a report in the Legislature, which it has rarely done, that would then be referred to this committee about a problem Mr. Johnston had just made us aware of. It seems to me that is a bit awkward too. There will be a reference of some kind, most likely a letter from the Speaker, as chairman of the board, to the committee.

Mr. Bossy: I am still uncomfortable in as much as I sympathize in a sense. It is how it appeared here.

Mr. Chairman: Let me explain that. I am just upholding a traditional right that we have held as a committee for any member of the assembly to walk in that door and say, "Here is a problem and I would like you to consider it." We have always held that any member can do that, write me a letter, appear before the committee.

1730

Mr. Bossy: In the regulation such as you just read, a member was not mentioned in what I can recall when you read the whole thing.

Mr. Chairman: What was that?

Mr. Bossy: There were all kinds of other bodies. We can take it upon ourselves as a committee, at our initiative, but it is the introduction of that information to our committee to evaluate and then to allow it to come into a procedure.

Mr. Chairman: Just this week the Speaker reinforced this. Remember when the Conservatives raised a question about Hansard reporting? The Speaker said: "If you are not happy with what I am saying or if you have a problem with how Hansard is reporting something, you have a right to take it to the Legislative Assembly committee. It is in their jurisidiction, their frame of reference." We have always held that for anybody who has a problem about anything, any member; that is what this committee is here for. If he wants to appear or write us a letter or refer a matter, an individual member of the assembly can appear here. He has that right.

Mr. Bossy: But as a committee, do we not have a right to refuse to hear it?

Mr. Chairman: No, we do not.

Mr. Bossy: But to take it into consideration, I am just saying--

Mr. Chairman: No, Maurice, we do not. We do not have a right to refuse to hear it. We have to hear them.

Mr. Bossy: That is a decision of the chairman.

Mr. Chairman: No, it is not my decision either. The tradition here is that any member can appear before this committee and present a problem of almost any kind to the committee. The committee has to listen to what the member has to say, I would say, by our practice. They do not have to write a big report about it and they do not have to take any great action, but the member has the right to appear and to present a problem; not a marital problem.

Mr. Bossy: In most cases, these things that arrive here from an individual are usually by someone who stands up in the Legislature looking for the right forum.

Mr. Warner: That is not how we got the material in the members' services committee. There were a lot of members who simply wrote--

Mr. Treleaven: A fly in their soup.

Mr. Warner: Yes.

A number of members have made individual requests directly to the members' services committee in writing. They did not stand up in the House and say they were concerned about a dental plan or their pension. They just wrote directly to the committee and the committee dealt with it. That has always been the way.

Mr. Chairman: I think we have chased this one around the block. We have a motion to table the letter from Mr. Johnston, which is in order. If that is what you want to do, that is how we can handle it. I will seek again: I have asked for the concurrence of the committee to have John round up the pieces of paper that the board has or that the library has, and maybe whatever Smirle could do, and provide that to you. Is that agreeable?

Mr. Treleaven: Yes.

Mr. Chairman: Okay.

Mr. Barlow: Is that part of the motion?

Mr. Chairman: No, it is not really part of the motion.

Those in favour of Mr. Bossy's motion to table the request?

Motion agreed to.

ORGANIZATION

Mr. Chairman: I have two or three matters that I want to draw to your attention.

First of all, on our visit to the National Association of State Legislatures, no one on the committee is going to be allowed to attend unless he pays attention. I just want to point out that if you want flights arranged by the clerk's office for spouses or designated spouses or a person of your choosing, would you please fill out the little form he sent around and we will try to do that. We are trying to get prices. We do not have them here. We will get them as soon as we can.

The Speaker has made a request to have available, I guess is the best way to put it, a subcommittee that might assist the Speaker and the board in some personnel matters over the summer. I said I did not think this would be a problem. It has not gone any further than that, but since this may be our last meeting, could we strike a little subcommittee or simply have an agreement that I could call one from each caucus who would assist in doing this? As far as I know, this probably would not involve a lot of time over the summer, perhaps a couple of days going through resumés of people who might fill various positions in the Legislative Assembly administrative section.

Mr. Warner: That is fine.

Mr. Chairman: Mr. Warner moves that we strike a subcommittee to assist with the hiring and that it consist of one from each caucus.

Motion agreed to.

Mr. Chairman: Can I have some volunteers?

Mr. Warner: I will.

Mr. Treleaven: I will.

Mr. Bossy: I am going to be gone for a short period.

Mr. Chairman: All right, we will try to get one from your caucus too.

I remind you that the report from the Commission on Election Finances on members' indemnity is before the committee. It is now on our agenda. It stands referred according to the new standing orders. I also indicate that I do not know what is happening with Bill 23--

Mr. Treleaven: What is Bill 23?

Mr. Chairman: --on conflict of interest.

Mr. Treleaven: You have heard the rumours, though.

Mr. Chairman: Rumours in the hall tell me it may happen next week; it may not. It may come back to this committee and it may not. All I can tell you--remember our original plan about how this would be best dealt with in September over a two- to three-week period?

Mr. Treleaven: Yes.

Mr. Chairman: Be prepared. That may be back on the burner.

Mr. Treleaven: You all come around to the Tory arguments eventually.

Mr. Chairman: What was the motion you moved last week?

Mr. Treleaven: Public hearings.

Mr. Chairman: No, the motion you moved was to refer the bill back to--

Mr. Treleaven: I was not in the room at that time.

Mr. Turner: So we could expedite it through the House.

Mr. Chairman: Is there any further business?

Mr. Warner: Hold it. Let us go back to the report from the Commission on Election Finances containing recommendations with respect to the indemnities and allowances of members of the Legislative Assembly. It seems to me--

Mr. Mancini: Could we go in camera for a few minutes? I have some other things I would like to discuss and we might as well do it all at once.

Mr. Chairman: Mr. Mancini moves that the committee go in camera.

A motion to go in camera is in order. I have a motion to go in camera.

Mr. Warner: For this? Why?

Mr. Mancini: There are a number of other things too.

Mr. Chairman: Okay, he has some other things.

Mr. Mancini: Please proceed, Mr. Warner. You know, Mr. Warner, people are allowed to make suggestions. If you do not like it, say so.

Mr. Warner: I am sorry but--

Mr. Mancini: You do not have to get upset.

Mr. Warner: I do not get upset. I do not appreciate being interrupted but that is nothing new for you.

Mr. Chairman: I have a motion to go in camera.

Motion agreed to.

The committee continued in camera at 5:36 p.m.

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